

109TH CONGRESS
1ST SESSION

S. 219

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 31, 2005

Mr. GRASSLEY (for himself and Mr. BAUCUS) introduced the following bill;
which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act of 1974 to protect the retirement security of American workers by ensuring that pension assets are adequately diversified and by providing workers with adequate access to, and information about, their pension plans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the
 3 “National Employee Savings and Trust Equity Guarantee
 4 Act of 2005”.

5 (b) TABLE OF CONTENTS.—

Sec. 1. Short title; table of contents.

**TITLE I—PROVISIONS RELATING TO INVESTMENT OF
 PARTICIPANTS’ ACCOUNTS**

SUBTITLE A—DIVERSIFICATION OF PENSION PLAN ASSETS

Sec. 101. Defined contribution plans required to provide employees with freedom
 to invest their plan assets.

Sec. 102. Notice of freedom to divest employer securities or real property.

SUBTITLE B—INFORMATION TO ASSIST PENSION PLAN PARTICIPANTS

Sec. 111. Periodic pension benefit statements.

Sec. 112. Defined contribution plans required to provide adequate investment
 education to participants.

Sec. 113. Material information relating to investment in employer securities.

Sec. 114. Fiduciary rules for plan sponsors designating independent investment
 advisers.

Sec. 115. Treatment of qualified retirement planning services.

SUBTITLE C—PROTECTION OF PENSION PLAN PARTICIPANTS

Sec. 121. Notice to participants or beneficiaries of blackout periods.

Sec. 122. Allowance of catchup payments.

**TITLE II—PROVISIONS RELATING TO FUNDING, DEDUCTIONS,
 AND THE PENSION BENEFIT GUARANTY CORPORATION**

**SUBTITLE A—REPLACEMENT OF INTEREST RATE ON 30-YEAR TREASURY
 SECURITIES**

Sec. 201. Replacement of 30-year Treasury rate for purposes of funding and
 PBGC premium rates.

Sec. 202. Replacement of 30-year Treasury rate for calculating lump-sum dis-
 tributions.

Sec. 203. Section 415 limitation on defined benefit plans.

**SUBTITLE B—PROVISIONS RELATING TO PENSION PLAN FUNDING AND
 DEDUCTIONS**

Sec. 211. Deduction limits for plan contributions.

Sec. 212. Benefit limitations for certain financially distressed plans.

Sec. 213. Updating deduction rules for combination of plans.

**SUBTITLE C—PROVISIONS RELATING TO THE PENSION BENEFIT GUARANTY
 CORPORATION**

- Sec. 221. PBGC premiums for new plans of small employers.
- Sec. 222. Additional PBGC premium for new and small plans.
- Sec. 223. Authorization for PBGC to pay interest on premium overpayment refunds.
- Sec. 224. Substantial owner benefits in terminated plans.
- Sec. 225. Acceleration of computation of benefits attributable to recoveries of employer liability.

SUBTITLE D—STUDIES

- Sec. 231. Joint study on revitalizing defined benefit plans.
- Sec. 232. Study on floor-offset ESOPs.

TITLE III—IMPROVEMENTS IN PORTABILITY AND DISTRIBUTION RULES

- Sec. 301. Clarifications regarding purchase of permissive service credit.
- Sec. 302. Allow rollover of after-tax amounts in annuity contracts.
- Sec. 303. Clarification of minimum distribution rules.
- Sec. 304. Waiver of 10 percent early withdrawal penalty tax on certain distributions of pension plans for public safety employees.
- Sec. 305. Allow rollovers by nonspouse beneficiaries of certain retirement plan distributions.
- Sec. 306. Faster vesting of employer nonelective contributions.
- Sec. 307. Allow direct rollovers from retirement plans to Roth IRAs.
- Sec. 308. Elimination of higher penalty on certain simple plan distributions.
- Sec. 309. Simple plan portability.
- Sec. 310. Eligibility for participation in retirement plans.
- Sec. 311. Transfers to the PBGC.
- Sec. 312. Missing participants.

TITLE IV—ADMINISTRATIVE PROVISIONS

- Sec. 401. Employee Plans Compliance Resolution System.
- Sec. 402. Extension to all governmental plans of moratorium on application of certain nondiscrimination rules applicable to State and local plans.
- Sec. 403. Notice and consent period regarding distributions.
- Sec. 404. Reporting simplification.
- Sec. 405. Voluntary early retirement incentive and employment retention plans maintained by local educational agencies and other entities.
- Sec. 406. No reduction in unemployment compensation as a result of pension rollovers.
- Sec. 407. Withholding on distributions from governmental Section 457 plans.
- Sec. 408. Provisions relating to plan amendments.

TITLE V—PROVISIONS RELATING TO SPOUSAL PENSION PROTECTION

SUBTITLE A—STUDY OF SPOUSAL CONSENT FOR DISTRIBUTIONS FROM DEFINED CONTRIBUTION PLANS

- Sec. 501. Joint study of application of spousal consent rules to defined contribution plans.

SUBTITLE B—DIVISION OF PENSION BENEFITS UPON DIVORCE

Sec. 511. Regulations on time and order of issuance of domestic relations orders.

SUBTITLE C—RAILROAD RETIREMENT

Sec. 521. Entitlement of divorced spouses to railroad retirement annuities independent of actual entitlement of employee.

Sec. 522. Extension of tier II railroad retirement benefits to surviving former spouses pursuant to divorce agreements.

SUBTITLE D—MODIFICATIONS OF JOINT AND SURVIVOR ANNUITY REQUIREMENTS

Sec. 531. Requirement for additional survivor annuity option.

TITLE VI—TAX COURT PENSION AND COMPENSATION

Sec. 600. Amendment of 1986 Code.

Sec. 601. Annuities for survivors of Tax Court judges who are assassinated.

Sec. 602. Cost-of-Living adjustments for Tax Court judicial survivor annuities.

Sec. 603. Life insurance coverage for Tax Court judges.

Sec. 604. Cost of life insurance coverage for Tax Court judges age 65 or over.

Sec. 605. Modification of timing of Lump-Sum Payment of judges' accrued annual leave.

Sec. 606. Participation of Tax Court judges in the Thrift Savings Plan.

Sec. 607. Exemption of teaching compensation of retired judges from limitation on outside earned income.

Sec. 608. General provisions relating to Magistrate Judges of the Tax Court.

Sec. 609. Annuities to surviving spouses and dependent children of Magistrate Judges of the Tax Court.

Sec. 610. Retirement and annuity Program.

Sec. 611. Incumbent Magistrate Judges of the Tax Court.

Sec. 612. Provisions for recall.

Sec. 613. Effective date.

TITLE VII—OTHER PROVISIONS

Sec. 701. Transfer of excess pension assets to multiemployer health plan.

Sec. 702. Transfer of excess funds from black lung disability trusts to United Mine Workers of America Combined Benefit Fund.

Sec. 703. Treatment of death benefits from corporate-owned life insurance.

1 **TITLE I—PROVISIONS RELATING**
 2 **TO INVESTMENT OF PARTICI-**
 3 **PANTS’ ACCOUNTS**

4 **Subtitle A—Diversification of**
 5 **Pension Plan Assets**

6 **SEC. 101. DEFINED CONTRIBUTION PLANS REQUIRED TO**
 7 **PROVIDE EMPLOYEES WITH FREEDOM TO IN-**
 8 **VEST THEIR PLAN ASSETS.**

9 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

10 (1) QUALIFICATION REQUIREMENT.—Section
 11 401(a) of the Internal Revenue Code of 1986 (relat-
 12 ing to qualified pension, profit-sharing, and stock
 13 bonus plans) is amended by inserting after para-
 14 graph (34) the following new paragraph:

15 “(35) DIVERSIFICATION REQUIREMENTS FOR
 16 CERTAIN DEFINED CONTRIBUTION PLANS.—

17 “(A) IN GENERAL.—A trust which is part
 18 of an applicable defined contribution plan shall
 19 not be treated as a qualified trust unless the
 20 plan meets the diversification requirements of
 21 subparagraphs (B), (C), and (D).

22 “(B) EMPLOYEE CONTRIBUTIONS AND
 23 ELECTIVE DEFERRALS INVESTED IN EMPLOYER
 24 SECURITIES OR REAL PROPERTY.—In the case
 25 of the portion of an applicable individual’s ac-

count attributable to employee contributions and elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this subparagraph if the applicable individual may elect to direct the plan to divest any such securities or real property and to reinvest an equivalent amount in other investment options meeting the requirements of subparagraph (D).

“(C) EMPLOYER CONTRIBUTIONS INVESTED IN EMPLOYER SECURITIES OR REAL PROPERTY.—In the case of the portion of the account attributable to employer contributions other than elective deferrals which is invested in employer securities or employer real property, a plan meets the requirements of this subparagraph if each applicable individual who—

“(i) is a participant who has completed at least 3 years of service, or

“(ii) is a beneficiary of a participant described in clause (i) or of a deceased participant,

may elect to direct the plan to divest any such securities or real property and to reinvest an

equivalent amount in other investment options
meeting the requirements of subparagraph (D).

“(D) INVESTMENT OPTIONS.—

“(i) IN GENERAL.—The requirements
of this subparagraph are met if the plan
offers not less than 3 investment options,
other than employer securities or employer
real property, to which an applicable indi-
vidual may direct the proceeds from the di-
vestment of employer securities or em-
ployer real property pursuant to this para-
graph, each of which is diversified and has
materially different risk and return charac-
teristics.

“(ii) TREATMENT OF CERTAIN RE-
STRICTIONS AND CONDITIONS.—

“(I) TIME FOR MAKING INVEST-
MENT CHOICES.—A plan shall not be
treated as failing to meet the require-
ments of this subparagraph merely be-
cause the plan limits the time for di-
vestment and reinvestment to peri-
odic, reasonable opportunities occur-
ring no less frequently than quarterly.

1 “(II) CERTAIN RESTRICTIONS
 2 AND CONDITIONS NOT ALLOWED.—
 3 Except as provided in regulations, a
 4 plan shall not meet the requirements
 5 of this subparagraph if the plan im-
 6 poses restrictions or conditions with
 7 respect to the investment of employer
 8 securities or employer real property
 9 which are not imposed on the invest-
 10 ment of other assets of the plan. This
 11 subclause shall not apply to any re-
 12 strictions or conditions imposed by
 13 reason of the application of securities
 14 laws.

15 “(E) APPLICABLE DEFINED CONTRIBU-
 16 TION PLAN.—For purposes of this paragraph—

17 “(i) IN GENERAL.—The term ‘applica-
 18 ble defined contribution plan’ means any
 19 defined contribution plan which holds any
 20 publicly traded employer securities.

21 “(ii) EXCEPTION FOR CERTAIN
 22 ESOPS.—Such term does not include an
 23 employee stock ownership plan if—

24 “(I) there are no contributions to
 25 such plan (or earnings thereunder)

1 which are held within such plan and
 2 are subject to subsection (k) or (m),
 3 and

4 “(II) such plan is a separate plan
 5 for purposes of section 414(l) with re-
 6 spect to any other defined benefit plan
 7 or defined contribution plan main-
 8 tained by the same employer or em-
 9 ployers.

10 “(iii) EXCEPTION FOR ONE PARTICI-
 11 PANT PLANS.—Such term does not include
 12 a one-participant retirement plan.

13 “(iv) ONE-PARTICIPANT RETIREMENT
 14 PLAN.—For purposes of clause (iii), the
 15 term ‘one-participant retirement plan’
 16 means a retirement plan that—

17 “(I) on the first day of the plan
 18 year covered only one individual (or
 19 the individual and the individual’s
 20 spouse) and the individual owned 100
 21 percent of the plan sponsor (whether
 22 or not incorporated), or covered only
 23 one or more partners (or partners and
 24 their spouses) in the plan sponsor,

1 “(II) meets the minimum cov-
 2 erage requirements of section 410(b)
 3 without being combined with any
 4 other plan of the business that covers
 5 the employees of the business,

6 “(III) does not provide benefits
 7 to anyone except the individual (and
 8 the individual’s spouse) or the part-
 9 ners (and their spouses),

10 “(IV) does not cover a business
 11 that is a member of an affiliated serv-
 12 ice group, a controlled group of cor-
 13 porations, or a group of businesses
 14 under common control, and

15 “(V) does not cover a business
 16 that uses the services of leased em-
 17 ployees (within the meaning of section
 18 414(n)).

19 For purposes of this clause, the term ‘part-
 20 ner’ includes a 2-percent shareholder (as
 21 defined in section 1372(b)) of an S cor-
 22 poration.

23 “(F) CERTAIN PLANS TREATED AS HOLD-
 24 ING PUBLICLY TRADED EMPLOYER SECURI-
 25 TIES.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in regulations or in clause (ii), a plan
3 holding employer securities which are not
4 publicly traded employer securities shall be
5 treated as holding publicly traded employer
6 securities if any employer corporation, or
7 any member of a controlled group of cor-
8 porations which includes such employer
9 corporation, has issued a class of stock
10 which is a publicly traded employer secu-
11 rity.

12 “(ii) EXCEPTION FOR CERTAIN CON-
13 TROLLED GROUPS WITH PUBLICLY TRAD-
14 ED SECURITIES.—Clause (i) shall not
15 apply to a plan if—

16 “(I) no employer corporation, or
17 parent corporation of an employer
18 corporation, has issued any publicly
19 traded employer security, and

20 “(II) no employer corporation, or
21 parent corporation of an employer
22 corporation, has issued any special
23 class of stock which grants particular
24 rights to, or bears particular risks for,
25 the holder or issuer with respect to

1 any corporation described in clause (i)
 2 which has issued any publicly traded
 3 employer security.

4 “(iii) DEFINITIONS.—For purposes of
 5 this subparagraph, the term—

6 “(I) ‘controlled group of corpora-
 7 tions’ has the meaning given such
 8 term by section 1563(a), except that
 9 ‘50 percent’ shall be substituted for
 10 ‘80 percent’ each place it appears,

11 “(II) ‘employer corporation’
 12 means a corporation which is an em-
 13 ployer maintaining the plan, and

14 “(III) ‘parent corporation’ has
 15 the meaning given such term by sec-
 16 tion 424(e).

17 “(G) OTHER DEFINITIONS.—For purposes
 18 of this paragraph—

19 “(i) APPLICABLE INDIVIDUAL.—The
 20 term ‘applicable individual’ means—

21 “(I) any participant in the plan,
 22 and

23 “(II) any beneficiary who has an
 24 account under the plan with respect to

1 which the beneficiary is entitled to ex-
2 ercise the rights of a participant.

3 “(ii) ELECTIVE DEFERRAL.—The
4 term ‘elective deferral’ means an employer
5 contribution described in section
6 402(g)(3)(A).

7 “(iii) EMPLOYER SECURITY.—The
8 term ‘employer security’ has the meaning
9 given such term by section 407(d)(1) of
10 the Employee Retirement Income Security
11 Act of 1974.

12 “(iv) EMPLOYER REAL PROPERTY.—
13 The term ‘employer real property’ has the
14 meaning given such term by section
15 407(d)(2) of the Employee Retirement In-
16 come Security Act of 1974.

17 “(v) EMPLOYEE STOCK OWNERSHIP
18 PLAN.—The term ‘employee stock owner-
19 ship plan’ has the meaning given such
20 term by section 4975(e)(7).

21 “(vi) PUBLICLY TRADED EMPLOYER
22 SECURITIES.—The term ‘publicly traded
23 employer securities’ means employer secu-
24 rities which are readily tradable on an es-
25 tablished securities market.

1 “(vii) YEAR OF SERVICE.—The term
 2 ‘year of service’ has the meaning given
 3 such term by section 411(a)(5).

4 “(H) TRANSITION RULE FOR SECURITIES
 5 OR REAL PROPERTY ATTRIBUTABLE TO EM-
 6 PLOYER CONTRIBUTIONS.—

7 “(i) RULES PHASED IN OVER 3
 8 YEARS.—

9 “(I) IN GENERAL.—In the case
 10 of the portion of an account to which
 11 subparagraph (C) applies and which
 12 consists of employer securities or em-
 13 ployer real property acquired in a plan
 14 year beginning before January 1,
 15 2006, subparagraph (C) shall only
 16 apply to the applicable percentage of
 17 such securities or real property. This
 18 subparagraph shall be applied sepa-
 19 rately with respect to each class of se-
 20 curities and employer real property.

21 “(II) EXCEPTION FOR CERTAIN
 22 PARTICIPANTS AGED 55 OR OVER.—
 23 Subclause (I) shall not apply to an
 24 applicable individual who is a partici-
 25 pant who has attained age 55 and

1 completed at least 3 years of service
 2 before the first plan year beginning
 3 after December 31, 2005.

4 “(ii) APPLICABLE PERCENTAGE.—For
 5 purposes of clause (i), the applicable per-
 6 centage shall be determined as follows:

“Plan year to which subparagraph (C) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.”.

7 (2) CONFORMING AMENDMENTS.—

8 (A) Section 401(a)(28)(B) of such Code
 9 (relating to additional requirements relating to
 10 employee stock ownership plans) is amended by
 11 adding at the end the following new clause:

12 “(v) EXCEPTION.—This subparagraph
 13 shall not apply to an applicable defined
 14 contribution plan (as defined in paragraph
 15 (35)(E)).”

16 (B) Section 409(h)(7) of such Code is
 17 amended by inserting “or subparagraph (B) or
 18 (C) of section 401(a)(35)” before the period at
 19 the end.

20 (C) Section 4980(c)(3)(A) of such Code is
 21 amended by striking “if—” and all that follows
 22 and inserting “if the requirements of subpara-
 23 graphs (B), (C), and (D) are met.”

1 (b) AMENDMENTS OF ERISA.—Section 204 of the
 2 Employee Retirement Income Security Act of 1974 (29
 3 U.S.C. 1054) is amended by redesignating subsection (j)
 4 as subsection (k) and by inserting after subsection (i) the
 5 following new subsection:

6 “(j) DIVERSIFICATION REQUIREMENTS FOR CERTAIN
 7 INDIVIDUAL ACCOUNT PLANS.—

8 “(1) IN GENERAL.—An applicable individual ac-
 9 count plan shall meet the diversification require-
 10 ments of paragraphs (2), (3), and (4).

11 “(2) EMPLOYEE CONTRIBUTIONS AND ELEC-
 12 TIVE DEFERRALS INVESTED IN EMPLOYER SECURI-
 13 TIES OR REAL PROPERTY.—In the case of the por-
 14 tion of an applicable individual’s account attrib-
 15 utable to employee contributions and elective defer-
 16 rals which is invested in employer securities or em-
 17 ployer real property, a plan meets the requirements
 18 of this paragraph if the applicable individual may
 19 elect to direct the plan to divest any such securities
 20 or real property and to reinvest an equivalent
 21 amount in other investment options meeting the re-
 22 quirements of paragraph (4).

23 “(3) EMPLOYER CONTRIBUTIONS INVESTED IN
 24 EMPLOYER SECURITIES OR REAL PROPERTY.—In the
 25 case of the portion of the account attributable to

1 employer contributions other than elective deferrals
 2 which is invested in employer securities or employer
 3 real property, a plan meets the requirements of this
 4 paragraph if each applicable individual who—

5 “(A) is a participant who has completed at
 6 least 3 years of service, or

7 “(B) is a beneficiary of a participant de-
 8 scribed in subparagraph (A) or of a deceased
 9 participant,

10 may elect to direct the plan to divest any such secu-
 11 rities or real property and to reinvest an equivalent
 12 amount in other investment options meeting the re-
 13 quirements of paragraph (4).

14 “(4) INVESTMENT OPTIONS.—

15 “(A) IN GENERAL.—The requirements of
 16 this paragraph are met if the plan offers not
 17 less than 3 investment options, other than em-
 18 ployer securities or employer real property, to
 19 which an applicable individual may direct the
 20 proceeds from the divestment of employer secu-
 21 rities or employer real property pursuant to this
 22 subsection, each of which is diversified and has
 23 materially different risk and return characteris-
 24 tics.

1 “(B) TREATMENT OF CERTAIN RESTRIC-
2 TIONS AND CONDITIONS.—

3 “(i) TIME FOR MAKING INVESTMENT
4 CHOICES.—A plan shall not be treated as
5 failing to meet the requirements of this
6 paragraph merely because the plan limits
7 the time for divestment and reinvestment
8 to periodic, reasonable opportunities occur-
9 ring no less frequently than quarterly.

10 “(ii) CERTAIN RESTRICTIONS AND
11 CONDITIONS NOT ALLOWED.—Except as
12 provided in regulations, a plan shall not
13 meet the requirements of this paragraph if
14 the plan imposes restrictions or conditions
15 with respect to the investment of employer
16 securities or employer real property which
17 are not imposed on the investment of other
18 assets of the plan. This subparagraph shall
19 not apply to any restrictions or conditions
20 imposed by reason of the application of se-
21 curities laws.

22 “(5) APPLICABLE INDIVIDUAL ACCOUNT
23 PLAN.—For purposes of this subsection—

24 “(A) IN GENERAL.—The term ‘applicable
25 individual account plan’ means any individual

1 account plan (as defined in section 3(34)) which
 2 holds any publicly traded employer securities.

3 “(B) EXCEPTION FOR CERTAIN ESOPS.—
 4 Such term does not include an employee stock
 5 ownership plan if—

6 “(i) there are no contributions to such
 7 plan (or earnings thereunder) which are
 8 held within such plan and are subject to
 9 subsection (k) or (m) of section 401 of the
 10 Internal Revenue Code of 1986, and

11 “(ii) such plan is a separate plan (for
 12 purposes of section 414(l) of such Code)
 13 with respect to any other defined benefit
 14 plan or individual account plan maintained
 15 by the same employer or employers.

16 “(C) EXCEPTION FOR ONE PARTICIPANT
 17 PLANS.—Such term shall not include a one-par-
 18 ticipant retirement plan (as defined in section
 19 101(i)(8)(B)).

20 “(D) CERTAIN PLANS TREATED AS HOLD-
 21 ING PUBLICLY TRADED EMPLOYER SECURI-
 22 TIES.—

23 “(i) IN GENERAL.—Except as pro-
 24 vided in regulations or in clause (ii), a plan
 25 holding employer securities which are not

1 publicly traded employer securities shall be
2 treated as holding publicly traded employer
3 securities if any employer corporation, or
4 any member of a controlled group of cor-
5 porations which includes such employer
6 corporation, has issued a class of stock
7 which is a publicly traded employer secu-
8 rity.

9 “(ii) EXCEPTION FOR CERTAIN CON-
10 TROLLED GROUPS WITH PUBLICLY TRAD-
11 ED SECURITIES.—Clause (i) shall not
12 apply to a plan if—

13 “(I) no employer corporation, or
14 parent corporation of an employer
15 corporation, has issued any publicly
16 traded employer security, and

17 “(II) no employer corporation, or
18 parent corporation of an employer
19 corporation, has issued any special
20 class of stock which grants particular
21 rights to, or bears particular risks for,
22 the holder or issuer with respect to
23 any corporation described in clause (i)
24 which has issued any publicly traded
25 employer security.

1 “(iii) DEFINITIONS.—For purposes of
2 this subparagraph, the term—

3 “(I) ‘controlled group of corpora-
4 tions’ has the meaning given such
5 term by section 1563(a) of the Inter-
6 nal Revenue Code of 1986, except
7 that ‘50 percent’ shall be substituted
8 for ‘80 percent’ each place it appears,

9 “(II) ‘employer corporation’
10 means a corporation which is an em-
11 ployer maintaining the plan, and

12 “(III) ‘parent corporation’ has
13 the meaning given such term by sec-
14 tion 424(e) of such Code.

15 “(6) OTHER DEFINITIONS.—For purposes of
16 this paragraph—

17 “(A) APPLICABLE INDIVIDUAL.—The term
18 ‘applicable individual’ means—

19 “(i) any participant in the plan, and

20 “(ii) any beneficiary who has an ac-
21 count under the plan with respect to which
22 the beneficiary is entitled to exercise the
23 rights of a participant.

24 “(B) ELECTIVE DEFERRAL.—The term
25 ‘elective deferral’ means an employer contribu-

1 tion described in section 402(g)(3)(A) of the In-
2 ternal Revenue Code of 1986.

3 “(C) EMPLOYER SECURITY.—The term
4 ‘employer security’ has the meaning given such
5 term by section 407(d)(1).

6 “(D) EMPLOYER REAL PROPERTY.—The
7 term ‘employer real property’ has the meaning
8 given such term by section 407(d)(2).

9 “(E) EMPLOYEE STOCK OWNERSHIP
10 PLAN.—The term ‘employee stock ownership
11 plan’ has the meaning given such term by sec-
12 tion 4975(e)(7) of such Code.

13 “(F) PUBLICLY TRADED EMPLOYER SECUR-
14 ITIES.—The term ‘publicly traded employer
15 securities’ means employer securities which are
16 readily tradable on an established securities
17 market.

18 “(G) YEAR OF SERVICE.—The term ‘year
19 of service’ has the meaning given such term by
20 section 203(b)(2).

21 “(7) TRANSITION RULE FOR SECURITIES OR
22 REAL PROPERTY ATTRIBUTABLE TO EMPLOYER CON-
23 TRIBUTIONS.—

24 “(A) RULES PHASED IN OVER 3 YEARS.—

1 “(i) IN GENERAL.—In the case of the
 2 portion of an account to which paragraph
 3 (3) applies and which consists of employer
 4 securities or employer real property ac-
 5 quired in a plan year beginning before
 6 January 1, 2006, paragraph (3) shall only
 7 apply to the applicable percentage of such
 8 securities or real property. This subpara-
 9 graph shall be applied separately with re-
 10 spect to each class of securities and em-
 11 ployer real property.

12 “(ii) EXCEPTION FOR CERTAIN PAR-
 13 TICIPANTS AGED 55 OR OVER.—Clause (i)
 14 shall not apply to an applicable individual
 15 who is a participant who has attained age
 16 55 and completed at least 3 years of serv-
 17 ice before the first plan year beginning
 18 after December 31, 2005.

19 “(B) APPLICABLE PERCENTAGE.—For
 20 purposes of subparagraph (A), the applicable
 21 percentage shall be determined as follows:

“Plan year to which paragraph (3) applies:	The applicable percentage is:
1st	33
2d	66
3d and following	100.”.

22 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graphs (2) and (3), the amendments made by this
 3 section shall apply to plan years beginning after De-
 4 cember 31, 2005.

5 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 6 GAINED AGREEMENTS.—In the case of a plan main-
 7 tained pursuant to 1 or more collective bargaining
 8 agreements between employee representatives and 1
 9 or more employers ratified on or before the date of
 10 the enactment of this Act, paragraph (1) shall be
 11 applied to benefits pursuant to, and individuals cov-
 12 ered by, any such agreement by substituting for
 13 “December 31, 2005” the earlier of—

14 (A) the later of—

15 (i) December 31, 2006, or

16 (ii) the date on which the last of such
 17 collective bargaining agreements termi-
 18 nates (determined without regard to any
 19 extension thereof after such date of enact-
 20 ment), or

21 (B) December 31, 2007.

22 (3) SPECIAL RULE FOR CERTAIN EMPLOYER SE-
 23 CURITIES HELD IN AN ESOP.—

24 (A) IN GENERAL.—In the case of employer
 25 securities to which this paragraph applies, the

1 amendments made by this section shall apply to
2 plan years beginning after the earlier of—

3 (i) December 31, 2006, or

4 (ii) the first date on which the fair
5 market value of such securities exceeds the
6 guaranteed minimum value described in
7 subparagraph (B)(ii).

8 (B) APPLICABLE SECURITIES.—This para-
9 graph shall apply to employer securities which
10 are attributable to employer contributions other
11 than elective deferrals, and which, on Sep-
12 tember 17, 2003—

13 (i) consist of preferred stock, and

14 (ii) are within an employee stock own-
15 ership plan (as defined in section
16 4975(e)(7) of the Internal Revenue Code
17 of 1986), the terms of which provide that
18 the value of the securities cannot be less
19 than the guaranteed minimum value speci-
20 fied by the plan on such date.

21 (C) COORDINATION WITH TRANSITION
22 RULE.—In applying section 401(a)(35)(H) of
23 the Internal Revenue Code of 1986 and section
24 204(j)(7) of the Employee Retirement Income
25 Security Act of 1974 (as added by this section)

1 to employer securities to which this paragraph
 2 applies, the applicable percentage shall be de-
 3 termined without regard to this paragraph.

4 **SEC. 102. NOTICE OF FREEDOM TO DIVEST EMPLOYER SE-**
 5 **CURITIES OR REAL PROPERTY.**

6 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

7 (1) EXCISE TAX.—Chapter 43 of the Internal
 8 Revenue Code of 1986 (relating to qualified pension,
 9 etc., plans) is amended by adding at the end the fol-
 10 lowing new section:

11 **“SEC. 4980H. FAILURE OF CERTAIN DEFINED CONTRIBU-**
 12 **TION PLANS TO PROVIDE NOTICE OF FREE-**
 13 **DOM TO DIVEST EMPLOYER SECURITIES.**

14 “(a) IMPOSITION OF TAX.—There is hereby imposed
 15 a tax on the failure of a defined contribution plan to meet
 16 the requirements of subsection (e) with respect to any par-
 17 ticipant or beneficiary.

18 “(b) AMOUNT OF TAX.—

19 “(1) IN GENERAL.—The amount of the tax im-
 20 posed by subsection (a) on any failure with respect
 21 to any participant or beneficiary shall be \$100 for
 22 each day in the noncompliance period with respect to
 23 the failure.

24 “(2) NONCOMPLIANCE PERIOD.—For purposes
 25 of this section, the term ‘noncompliance period’

1 means, with respect to any failure, the period begin-
 2 ning on the date the failure first occurs and ending
 3 on the date the notice to which the failure relates is
 4 provided or the failure is otherwise corrected.

5 “(c) LIMITATIONS ON AMOUNT OF TAX.—

6 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
 7 DISCOVERED AND REASONABLE DILIGENCE EXER-
 8 CISED.—No tax shall be imposed by subsection (a)
 9 on any failure during any period for which it is es-
 10 tablished to the satisfaction of the Secretary that
 11 any person subject to liability for tax under sub-
 12 section (d) did not know that the failure existed and
 13 exercised reasonable diligence to meet the require-
 14 ments of subsection (e).

15 “(2) TAX NOT TO APPLY TO FAILURES COR-
 16 RECTED WITHIN 30 DAYS.—No tax shall be imposed
 17 by subsection (a) on any failure if—

18 “(A) any person subject to liability for the
 19 tax under subsection (d) exercised reasonable
 20 diligence to meet the requirements of subsection
 21 (e), and

22 “(B) such person provides the notice de-
 23 scribed in subsection (e) during the 30-day pe-
 24 riod beginning on the first date such person

1 knew, or exercising reasonable diligence should
 2 have known, that such failure existed.

3 “(3) OVERALL LIMITATION FOR UNINTEN-
 4 TIONAL FAILURES.—

5 “(A) IN GENERAL.—If the person subject
 6 to liability for tax under subsection (d) exer-
 7 cised reasonable diligence to meet the require-
 8 ments of subsection (e), the tax imposed by
 9 subsection (a) for failures during the taxable
 10 year of the employer (or, in the case of a multi-
 11 employer plan, the taxable year of the trust
 12 forming part of the plan) shall not exceed
 13 \$500,000. For purposes of the preceding sen-
 14 tence, all multiemployer plans of which the
 15 same trust forms a part shall be treated as 1
 16 plan.

17 “(B) TAXABLE YEARS IN THE CASE OF
 18 CERTAIN CONTROLLED GROUPS.—For purposes
 19 of this paragraph, if all persons who are treated
 20 as a single employer for purposes of this section
 21 do not have the same taxable year, the taxable
 22 years taken into account shall be determined
 23 under principles similar to the principles of sec-
 24 tion 1561.

1 “(4) WAIVER BY SECRETARY.—In the case of a
2 failure which is due to reasonable cause and not to
3 willful neglect, the Secretary may waive part or all
4 of the tax imposed by subsection (a) to the extent
5 that the payment of such tax would be excessive or
6 otherwise inequitable relative to the failure involved.

7 “(d) LIABILITY FOR TAX.—The following shall be lia-
8 ble for the tax imposed by subsection (a):

9 “(1) In the case of a plan not described in
10 paragraph (2), the employer.

11 “(2) In the case of a multiemployer plan, the
12 plan.

13 “(e) NOTICE OF RIGHT TO DIVEST.—Not later than
14 30 days before the first date on which an applicable indi-
15 vidual of an applicable defined contribution plan is eligible
16 to exercise the right under section 401(a)(35) to direct
17 the proceeds from the divestment of employer securities
18 or employer real property with respect to any type of con-
19 tribution, the plan administrator shall provide to such in-
20 dividual a notice—

21 “(1) setting forth such right under such sec-
22 tion, and

23 “(2) describing the importance of diversifying
24 the investment of retirement account assets.

1 The notice required by this subsection shall be written in
 2 a manner calculated to be understood by the average plan
 3 participant and may be delivered in written, electronic, or
 4 other appropriate form to the extent that such form is rea-
 5 sonably accessible to the applicable individual.

6 “(f) DEFINITIONS.—Any term used in this section
 7 which is also used in section 401(a)(35) shall have the
 8 meaning given such term by section 401(a)(35).”

9 (2) AGGREGATION.—Section 414(t) of such
 10 Code is amended by striking “or 4980B” and insert-
 11 ing “4980B, or 4980H”.

12 (3) CLERICAL AMENDMENT.—The table of sec-
 13 tions for chapter 43 of such Code is amended by
 14 adding at the end the following new item:

“Sec. 4980H. Failure of certain defined contribution plans to provide notice of
 freedom to divest employer securities.”.

15 (b) AMENDMENTS OF ERISA.—

16 (1) IN GENERAL.—Section 104 of the Employee
 17 Retirement Income Security Act of 1974 (29 U.S.C.
 18 1024) is amended by redesignating subsection (d) as
 19 subsection (e) and by inserting after subsection (c)
 20 the following new subsection:

21 “(d) NOTICE OF RIGHT TO DIVEST.—Not later than
 22 30 days before the first date on which an applicable indi-
 23 vidual of an applicable individual account plan is eligible
 24 to exercise the right under section 204(j) to direct the pro-

ceeds from the divestment of employer securities or employer real property with respect to any type of contribution, the administrator shall provide to such individual a notice—

“(1) setting forth such right under such section, and

“(2) describing the importance of diversifying the investment of retirement account assets.

The notice required by this subsection shall be written in a manner calculated to be understood by the average plan participant and may be delivered in written, electronic, or other appropriate form to the extent that such form is reasonably accessible to the applicable individual.”

(2) PENALTIES.—Section 502(c)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(7)) is amended by inserting “or section 104(d)” after “section 101(i)”.

(c) MODEL NOTICE.—The Secretary of Labor shall, within 180 days after the date of the enactment of this subsection, prescribe a model notice for purposes of satisfying the requirements of the amendments made by this section.

(d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
 2 this section shall apply to plan years beginning after
 3 December 31, 2005.

4 (2) TRANSITION RULE.—If notice under section
 5 4980H(e) of the Internal Revenue Code of 1986 or
 6 section 104(d) of the Employee Retirement Income
 7 Security Act of 1974 (as added by this section)
 8 would otherwise be required to be provided before
 9 the 90th day after the date of the enactment of this
 10 Act, such notice shall not be required to be provided
 11 until such 90th day.

12 **Subtitle B—Information to Assist** 13 **Pension Plan Participants**

14 **SEC. 111. PERIODIC PENSION BENEFIT STATEMENTS.**

15 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

16 (1) EXCISE TAX.—Chapter 43 of the Internal
 17 Revenue Code of 1986 (relating to qualified pension,
 18 etc., plans), as amended by this Act, is amended by
 19 adding at the end the following new section:

20 **“SEC. 4980I. FAILURE OF CERTAIN PENSION PLANS TO PRO-** 21 **VIDE REQUIRED INFORMATION.**

22 “(a) IMPOSITION OF TAX.—There is hereby imposed
 23 a tax on the failure of an applicable pension plan to meet
 24 the requirements of subsection (e) with respect to any par-
 25 ticipant or beneficiary.

1 “(b) AMOUNT OF TAX.—

2 “(1) IN GENERAL.—The amount of the tax im-
3 posed by subsection (a) on any failure with respect
4 to any participant or beneficiary shall be \$100 for
5 each day in the noncompliance period with respect to
6 the failure.

7 “(2) NONCOMPLIANCE PERIOD.—For purposes
8 of this section, the term ‘noncompliance period’
9 means, with respect to any failure, the period begin-
10 ning on the date the failure first occurs and ending
11 on the date the statement to which the failure re-
12 lates is provided or the failure is otherwise corrected.

13 “(c) LIMITATIONS ON AMOUNT OF TAX.—

14 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
15 DISCOVERED AND REASONABLE DILIGENCE EXER-
16 CISED.—No tax shall be imposed by subsection (a)
17 on any failure during any period for which it is es-
18 tablished to the satisfaction of the Secretary that
19 any person subject to liability for tax under sub-
20 section (d) did not know that the failure existed and
21 exercised reasonable diligence to meet the require-
22 ments of subsection (e).

23 “(2) TAX NOT TO APPLY TO FAILURES COR-
24 RECTED WITHIN 30 DAYS.—No tax shall be imposed
25 by subsection (a) on any failure if—

1 “(A) any person subject to liability for the
 2 tax under subsection (d) exercised reasonable
 3 diligence to meet the requirements of subsection
 4 (e), and

5 “(B) such person provides the statement
 6 described in subsection (e) during the 30-day
 7 period beginning on the first date such person
 8 knew, or exercising reasonable diligence should
 9 have known, that such failure existed.

10 “(3) OVERALL LIMITATION FOR UNINTEN-
 11 TIONAL FAILURES.—

12 “(A) IN GENERAL.—If the person subject
 13 to liability for tax under subsection (d) exer-
 14 cised reasonable diligence to meet the require-
 15 ments of subsection (e), the tax imposed by
 16 subsection (a) for failures during the taxable
 17 year of the employer (or, in the case of a multi-
 18 employer plan, the taxable year of the trust
 19 forming part of the plan) shall not exceed
 20 \$500,000. For purposes of the preceding sen-
 21 tence, all multiemployer plans of which the
 22 same trust forms a part shall be treated as 1
 23 plan.

24 “(B) TAXABLE YEARS IN THE CASE OF
 25 CERTAIN CONTROLLED GROUPS.—For purposes

1 of this paragraph, if all persons who are treated
 2 as a single employer for purposes of this section
 3 do not have the same taxable year, the taxable
 4 years taken into account shall be determined
 5 under principles similar to the principles of sec-
 6 tion 1561.

7 “(4) WAIVER BY SECRETARY.—In the case of a
 8 failure which is due to reasonable cause and not to
 9 willful neglect, the Secretary may waive part or all
 10 of the tax imposed by subsection (a) to the extent
 11 that the payment of such tax would be excessive or
 12 otherwise inequitable relative to the failure involved.

13 “(d) LIABILITY FOR TAX.—The following shall be lia-
 14 ble for the tax imposed by subsection (a):

15 “(1) In the case of a plan not described in
 16 paragraph (2) or (3), the employer.

17 “(2) In the case of a multiemployer plan, the
 18 plan.

19 “(3) In the case of an arrangement described in
 20 subsection (e)(4), the person required to provide the
 21 statement under subsection (e).

22 “(e) REQUIREMENTS TO PROVIDE PENSION BENEFIT
 23 STATEMENTS.—

24 “(1) REQUIREMENTS.—

1 “(A) DEFINED CONTRIBUTION PLAN.—

2 The administrator of an applicable pension plan
3 which is a defined contribution plan shall fur-
4 nish a pension benefit statement described in
5 paragraph (2)—

6 “(i) at least once each calendar quar-
7 ter to a participant or beneficiary who has
8 the right to direct the investment of assets
9 in his or her account under the plan,

10 “(ii) at least once each calendar year
11 to a participant or beneficiary who has his
12 or her own account under the plan but who
13 does not have the right to direct the invest-
14 ment of assets in that account, and

15 “(iii) upon written request to a plan
16 beneficiary who is not a participant or ben-
17 eficiary described in clause (i) or (ii), ex-
18 cept that this subparagraph shall apply to
19 only 1 request during any 12-month pe-
20 riod.

21 “(B) DEFINED BENEFIT PLAN.—The ad-
22 ministrator of an applicable pension plan which
23 is a defined benefit plan shall furnish a pension
24 benefit statement described in paragraph (2)—

1 “(i) at least once every 3 years to
 2 each participant who has a nonforfeitable
 3 accrued benefit and who is employed by
 4 the employer maintaining the plan at the
 5 time the statement is to be furnished, and

6 “(ii) to a participant or beneficiary of
 7 the plan upon written request, except that
 8 this clause shall apply to only 1 request
 9 during any 12-month period.

10 Information furnished under clause (i) to a par-
 11 ticipant may be based on reasonable estimates
 12 determined under regulations prescribed by the
 13 Secretary of Labor, in consultation with the
 14 Pension Benefit Guaranty Corporation.

15 “(2) STATEMENTS.—

16 “(A) IN GENERAL.—A pension benefit
 17 statement furnished under paragraph (1)—

18 “(i) shall indicate, on the basis of the
 19 latest available information—

20 “(I) the total benefits accrued,
 21 and

22 “(II) the nonforfeitable pension
 23 benefits, if any, which have accrued,
 24 or the earliest date on which benefits
 25 will become nonforfeitable,

1 “(ii) shall include an explanation of
 2 any permitted disparity under section
 3 401(l) or any floor-offset arrangement that
 4 may be applied in determining any accrued
 5 benefits described in clause (i),

6 “(iii) shall be written in a manner cal-
 7 culated to be understood by the average
 8 plan participant, and

9 “(iv) may be delivered in written, elec-
 10 tronic, or other appropriate form to the ex-
 11 tent such form is reasonably accessible to
 12 the participant or beneficiary.

13 “(B) ADDITIONAL INFORMATION.—In the
 14 case of a defined contribution plan, any pension
 15 benefit statement under clause (i) or (ii) of
 16 paragraph (1)(A) shall include—

17 “(i) the value of each investment to
 18 which assets in the individual account have
 19 been allocated, determined as of the most
 20 recent valuation date under the plan, in-
 21 cluding the value of any assets held in the
 22 form of employer securities or employer
 23 real property, without regard to whether
 24 such securities or real property were con-
 25 tributed by the plan sponsor or acquired at

1 the direction of the plan or of the partici-
 2 pant or beneficiary, and

3 “(ii) in the case of a pension benefit
 4 statement under paragraph (1)(A)(i)—

5 “(I) an explanation of any limita-
 6 tions or restrictions on any right of
 7 the participant or beneficiary under
 8 the plan to direct an investment, and

9 “(II) a notice that investments in
 10 any individual account may not be
 11 adequately diversified if the value of
 12 any investment in the account exceeds
 13 20 percent of the fair market value of
 14 all investments in the account.

15 “(C) ALTERNATIVE NOTICE.—The require-
 16 ments of subparagraph (A)(i)(II) are met if, at
 17 least annually and in accordance with require-
 18 ments of the Secretary of Labor, the plan—

19 “(i) updates the information described
 20 in such paragraph which is provided in the
 21 pension benefit statement, or

22 “(ii) provides in a separate statement
 23 such information as is necessary to enable
 24 a participant or beneficiary to determine
 25 their nonforfeitable vested benefits.

1 “(3) DEFINED BENEFIT PLANS.—

2 “(A) ALTERNATIVE NOTICE.—In the case
3 of a defined benefit plan, the requirements of
4 paragraph (1)(B)(i) shall be treated as met
5 with respect to a participant if at least once
6 each year the administrator provides to the par-
7 ticipant notice of the availability of the pension
8 benefit statement and the ways in which the
9 participant may obtain such statement. Such
10 notice may be delivered in written, electronic, or
11 other appropriate form to the extent such form
12 is reasonably accessible to the participant.

13 “(B) YEARS IN WHICH NO BENEFITS AC-
14 CRUE.—The Secretary may provide that years
15 in which no employee or former employee bene-
16 fits (within the meaning of section 410(b))
17 under the plan need not be taken into account
18 in determining the 3-year period under para-
19 graph (1)(B)(i).

20 “(4) SPECIAL RULE FOR CERTAIN ANNU-
21 ITIES.—In the case of an annuity contract or custo-
22 dial account described in section 403(b) which is not
23 a plan established or maintained by the employer,
24 the pension benefit statement under this subsection
25 shall be furnished by the issuer of the contract, the

1 custodian of the account, or such other person as is
2 specified by the Secretary.

3 “(f) DEFINITIONS AND SPECIAL RULES.—For pur-
4 poses of this section—

5 “(1) APPLICABLE PENSION PLAN.—The term
6 ‘applicable pension plan’ means a plan described in
7 clause (i), (ii), or (iv) of section 219(g)(5)(A) other
8 than a one-participant retirement plan (as defined in
9 section 401(a)(35)(E)(iv)).

10 “(2) EXCEPTION FOR GOVERNMENT AND
11 CHURCH PLANS.—This section shall not apply to any
12 governmental or church plan. For purposes of this
13 paragraph, the terms ‘governmental plan’ and
14 ‘church plan’ have the meanings given such terms by
15 section 414.”

16 (2) AGGREGATION.—Section 414(t) of such
17 Code, as amended by this Act, is amended by strik-
18 ing “or 4980H” and inserting “4980H, or 4980I”.

19 (3) CLERICAL AMENDMENT.—The table of sec-
20 tions for chapter 43 of such Code, as amended by
21 this Act, is amended by adding at the end the fol-
22 lowing new item:

“Sec. 4980I. Failure of certain pension plans to provide required information.”.

23 (b) AMENDMENTS OF ERISA.—

1 (1) IN GENERAL.—Section 105(a) of the Em-
 2 ployee Retirement Income Security Act of 1974 (29
 3 U.S.C. 1025(a)) is amended to read as follows:

4 “(a) REQUIREMENTS TO PROVIDE PENSION BEN-
 5 EFIT STATEMENTS.—

6 “(1) REQUIREMENTS.—

7 “(A) INDIVIDUAL ACCOUNT PLAN.—The
 8 administrator of an individual account plan
 9 (other than a one-participant retirement plan
 10 described in section 101(i)(8)(B)) shall furnish
 11 a pension benefit statement—

12 “(i) at least once each calendar quar-
 13 ter to a participant or beneficiary who has
 14 the right to direct the investment of assets
 15 in his or her account under the plan,

16 “(ii) at least once each calendar year
 17 to a participant or beneficiary who has his
 18 or her own account under the plan but
 19 does not have the right to direct the invest-
 20 ment of assets in that account, and

21 “(iii) upon written request to a plan
 22 beneficiary not described in clause (i) or
 23 (ii).

24 “(B) DEFINED BENEFIT PLAN.—The ad-
 25 ministrator of a defined benefit plan (other

than a one-participant retirement plan described in section 101(i)(8)(B)) shall furnish a pension benefit statement—

“(i) at least once every 3 years to each participant with a nonforfeitable accrued benefit and who is employed by the employer maintaining the plan at the time the statement is to be furnished, and

“(ii) to a participant or beneficiary of the plan upon written request.

Information furnished under clause (i) to a participant may be based on reasonable estimates determined under regulations prescribed by the Secretary, in consultation with the Pension Benefit Guaranty Corporation.

“(2) STATEMENTS.—

“(A) IN GENERAL.—A pension benefit statement under paragraph (1)—

“(i) shall indicate, on the basis of the latest available information—

“(I) the total benefits accrued,
and

“(II) the nonforfeitable pension benefits, if any, which have accrued,

1 or the earliest date on which benefits
2 will become nonforfeitable,

3 “(ii) shall include an explanation of
4 any permitted disparity under section
5 401(l) of the Internal Revenue Code of
6 1986 or any floor-offset arrangement that
7 may be applied in determining any accrued
8 benefits described in clause (i),

9 “(iii) shall be written in a manner cal-
10 culated to be understood by the average
11 plan participant, and

12 “(iv) may be delivered in written, elec-
13 tronic, or other appropriate form to the ex-
14 tent such form is reasonably accessible to
15 the participant or beneficiary.

16 “(B) ADDITIONAL INFORMATION.—In the
17 case of an individual account plan, any pension
18 benefit statement under clause (i) or (ii) of
19 paragraph (1)(A) shall include—

20 “(i) the value of each investment to
21 which assets in the individual account have
22 been allocated, determined as of the most
23 recent valuation date under the plan, in-
24 cluding the value of any assets held in the
25 form of employer securities or employer

1 real property, without regard to whether
 2 such securities or real property were con-
 3 tributed by the plan sponsor or acquired at
 4 the direction of the plan or of the partici-
 5 pant or beneficiary, and

6 “(ii) in the case of a pension benefit
 7 statement under paragraph (1)(A)(i)—

8 “(I) an explanation of any limita-
 9 tions or restrictions on any right of
 10 the participant or beneficiary under
 11 the plan to direct an investment, and

12 “(II) a notice that investments in
 13 any individual account may not be
 14 adequately diversified if the value of
 15 any investment in the account exceeds
 16 20 percent of the fair market value of
 17 all investments in the account.

18 “(C) ALTERNATIVE NOTICE.—The require-
 19 ments of subparagraph (A)(i)(II) are met if, at
 20 least annually and in accordance with require-
 21 ments of the Secretary, the plan—

22 “(i) updates the information described
 23 in such paragraph which is provided in the
 24 pension benefit statement, or

1 “(ii) provides in a separate statement
 2 such information as is necessary to enable
 3 a participant or beneficiary to determine
 4 their nonforfeitable vested benefits.

5 “(3) DEFINED BENEFIT PLANS.—

6 “(A) ALTERNATIVE NOTICE.—In the case
 7 of a defined benefit plan, the requirements of
 8 paragraph (1)(B)(i) shall be treated as met
 9 with respect to a participant if at least once
 10 each year the administrator provides to the par-
 11 ticipant notice of the availability of the pension
 12 benefit statement and the ways in which the
 13 participant may obtain such statement. Such
 14 notice may be delivered in written, electronic, or
 15 other appropriate form to the extent such form
 16 is reasonably accessible to the participant.

17 “(B) YEARS IN WHICH NO BENEFITS AC-
 18 CRUE.—The Secretary may provide that years
 19 in which no employee or former employee bene-
 20 fits (within the meaning of section 410(b) of
 21 the Internal Revenue Code of 1986) under the
 22 plan need not be taken into account in deter-
 23 mining the 3-year period under paragraph
 24 (1)(B)(i).”

25 “(2) CONFORMING AMENDMENTS.—

1 (A) Section 105 of the Employee Retirement
 2 Income Security Act of 1974 (29 U.S.C.
 3 1025) is amended by striking subsection (d).

4 (B) Section 105(b) of such Act (29 U.S.C.
 5 1025(b)) is amended to read as follows:

6 “(b) LIMITATION ON NUMBER OF STATEMENTS.—In
 7 no case shall a participant or beneficiary of a plan be enti-
 8 tled to more than 1 statement described in subparagraph
 9 (A)(iii) or (B)(ii) of subsection (a)(1), whichever is appli-
 10 cable, in any 12-month period.”

11 (C) Section 502(c)(1) of such Act (29
 12 U.S.C. 1132(c)(1)) is amended by striking “or
 13 section 101(f)” and inserting “section 101(f),
 14 or section 105(a)”.

15 (c) MODEL STATEMENTS.—The Secretary of Labor
 16 shall, within 180 days after the date of the enactment of
 17 this section, develop 1 or more model benefit statements
 18 that are written in a manner calculated to be understood
 19 by the average plan participant and that may be used by
 20 plan administrators in complying with the requirements
 21 of section 4980I of the Internal Revenue Code of 1986
 22 and section 105 of the Employee Retirement Income Secu-
 23 rity Act of 1974.

24 (d) EFFECTIVE DATE.—

1 (1) IN GENERAL.—The amendments made by
 2 this section shall apply to plan years beginning after
 3 December 31, 2006.

4 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 5 GAINED AGREEMENTS.—In the case of a plan main-
 6 tained pursuant to 1 or more collective bargaining
 7 agreements between employee representatives and 1
 8 or more employers ratified on or before the date of
 9 the enactment of this Act, paragraph (1) shall be
 10 applied to benefits pursuant to, and individuals cov-
 11 ered by, any such agreement by substituting for
 12 “December 31, 2006” the earlier of—

13 (A) the later of—

14 (i) December 31, 2007, or

15 (ii) the date on which the last of such
 16 collective bargaining agreements termi-
 17 nates (determined without regard to any
 18 extension thereof after such date of enact-
 19 ment), or

20 (B) December 31, 2008.

1 **SEC. 112. DEFINED CONTRIBUTION PLANS REQUIRED TO**
 2 **PROVIDE ADEQUATE INVESTMENT EDU-**
 3 **CATION TO PARTICIPANTS.**

4 (a) EXCISE TAX ON FAILURE OF CERTAIN DEFINED
 5 CONTRIBUTION PLANS TO PROVIDE ADEQUATE INVEST-
 6 MENT INFORMATION.—

7 (1) IN GENERAL.—Section 4980I(e)(1)(A) of
 8 the Internal Revenue Code of 1986, as added by sec-
 9 tion 111, is amended by adding at the end the fol-
 10 lowing new flush sentence:

11 “In addition to the pension benefit statement,
 12 the administrator shall furnish at least once
 13 each year to each participant or beneficiary who
 14 has the right to direct the investment of assets
 15 in his or her account the model form relating
 16 to basic investment guidelines as provided in
 17 paragraph (5).”

18 (2) BASIC INVESTMENT GUIDELINES.—Section
 19 4980I(e) of such Code, as so added, is amended by
 20 adding at the end the following new paragraph:

21 “(5) BASIC INVESTMENT GUIDELINES.—

22 “(A) IN GENERAL.—The Secretary shall,
 23 in consultation with the Secretary of Labor, de-
 24 velop and make available to defined contribu-
 25 tion plans for distribution under paragraph
 26 (1)(A) a model form containing basic guidelines

1 for investing for retirement. Except as other-
2 wise provided by the Secretary, such guidelines
3 shall include—

4 “(i) information on the benefits of di-
5 versification,

6 “(ii) information on the essential dif-
7 ferences, in terms of risk and return, of
8 pension plan investments, including stocks,
9 bonds, mutual funds, and money market
10 investments,

11 “(iii) information on how an individ-
12 ual’s pension plan investment allocations
13 may differ depending on the individual’s
14 age and years to retirement and on other
15 factors determined by the Secretary,

16 “(iv) sources of information where in-
17 dividuals may learn more about pension
18 rights, individual investing, and investment
19 advice, and

20 “(v) such other information related to
21 individual investing as the Secretary deter-
22 mines appropriate.

23 “(B) CALCULATION INFORMATION.—The
24 model form under subparagraph (A) shall in-
25 clude addresses for Internet sites, and a work-

1 sheet, which a participant or beneficiary may
2 use to calculate—

3 “(i) the retirement age value of the
4 participant’s or beneficiary’s nonforfeitable
5 pension benefits under the plan (expressed
6 as an annuity amount and determined by
7 reference to varied historical annual rates
8 of return and annuity interest rates), and

9 “(ii) other important amounts relating
10 to retirement savings, including the
11 amount which a participant or beneficiary
12 would be required to save annually to pro-
13 vide a retirement income equal to various
14 percentages of their current salary (ad-
15 justed for expected growth prior to retire-
16 ment).

17 The Secretary of Labor shall develop an Inter-
18 net site which an individual may use in making
19 such calculations and the address for such site
20 shall be included with the form.

21 “(C) PUBLIC COMMENT.—The Secretary
22 shall provide at least 90 days for public com-
23 ment before publishing final notice of the model
24 form.

1 “(D) RULES RELATING TO FORM AND
2 STATEMENT.—The model form under subpara-
3 graph (A)—

4 “(i) shall be written in a manner cal-
5 culated to be understood by the average
6 plan participant, and

7 “(ii) may be delivered in written, elec-
8 tronic, or other appropriate form to the ex-
9 tent such form is reasonably accessible to
10 participants and beneficiaries.”

11 (3) CONFORMING AMENDMENTS.—Section
12 4980I of such Code is amended—

13 (A) by adding at the end of subsection
14 (c)(3) the following new subparagraph:

15 “(C) SEPARATE APPLICATION.—This para-
16 graph shall be applied separately to failures to
17 meet the requirements of subsection (e)(1)(A)
18 to provide pension benefit statements and fail-
19 ures to meet the requirements of subsection
20 (e)(1)(A) to provide model forms containing
21 basic investment guidelines.”;

22 (B) by inserting “or model form” after
23 “statement” in subsection (d)(3); and

1 (C) by inserting “or model form containing
 2 basic investment guidelines” after “statement”
 3 in subsection (e)(4).

4 (b) ADEQUATE INVESTMENT EDUCATION.—

5 (1) IN GENERAL.—Section 104 of the Employee
 6 Retirement Income Security Act of 1974 (29 U.S.C.
 7 1024), as amended by section 102, is amended by
 8 redesignating subsection (e) as subsection (f) and by
 9 inserting after subsection (d) the following new sub-
 10 section:

11 “(e) BASIC INVESTMENT GUIDELINES.—

12 “(1) IN GENERAL.—The administrator of an in-
 13 dividual account plan (other than a one-participant
 14 retirement plan described in section 101(i)(8)(B))
 15 shall furnish at least once each year to each partici-
 16 pant or beneficiary who has the right to direct the
 17 investment of assets in his or her account the model
 18 form relating to basic investment guidelines which is
 19 described in paragraph (2).

20 “(2) MODEL FORM.—

21 “(A) IN GENERAL.—The Secretary of the
 22 Treasury, in consultation with the Secretary,
 23 shall develop and make available to individual
 24 account plans for distribution under paragraph
 25 (1) a model form containing basic guidelines for

1 investing for retirement. Except as otherwise
2 provided by the Secretary of the Treasury, such
3 guidelines shall include—

4 “(i) information on the benefits of di-
5 versification,

6 “(ii) information on the essential dif-
7 ferences, in terms of risk and return, of
8 pension plan investments, including stocks,
9 bonds, mutual funds, and money market
10 investments,

11 “(iii) information on how an individ-
12 ual’s pension plan investment allocations
13 may differ depending on the individual’s
14 age and years to retirement and on other
15 factors determined by the Secretary of the
16 Treasury,

17 “(iv) sources of information where in-
18 dividuals may learn more about pension
19 rights, individual investing, and investment
20 advice, and

21 “(v) such other information related to
22 individual investing as the Secretary of the
23 Treasury determines appropriate.

24 “(B) CALCULATION INFORMATION.—The
25 model form under subparagraph (A) shall in-

1 clude addresses for Internet sites, and a work-
 2 sheet, which a participant or beneficiary may
 3 use to calculate—

4 “(i) the retirement age value of the
 5 participant’s or beneficiary’s nonforfeitable
 6 pension benefits under the plan (expressed
 7 as an annuity amount and determined by
 8 reference to varied historical annual rates
 9 of return and annuity interest rates), and

10 “(ii) other important amounts relating
 11 to retirement savings, including the
 12 amount which a participant or beneficiary
 13 would be required to save annually to pro-
 14 vide a retirement income equal to various
 15 percentages of their current salary (ad-
 16 justed for expected growth prior to retire-
 17 ment).

18 The Secretary shall develop an Internet site which an indi-
 19 vidual may use in making such calculations and the ad-
 20 dress for such site shall be included with the form.

21 “(3) RULES RELATING TO FORM AND STATE-
 22 MENT.—The model form under paragraph (2)—

23 “(A) shall be written in a manner cal-
 24 culated to be understood by the average plan
 25 participant, and

1 “(B) may be delivered in written, elec-
 2 tronic, or other appropriate form to the extent
 3 such form is reasonably accessible to partici-
 4 pants and beneficiaries.”

5 (2) ENFORCEMENT.—Section 502(c)(7) of such
 6 Act (29 U.S.C. 1132(c)(7)), as amended by section
 7 102, is amended by striking “section 104(d)” and
 8 inserting “subsection (d) or (e) of section 104”.

9 (c) EFFECTIVE DATE.—

10 (1) IN GENERAL.—The amendments made by
 11 this section shall apply to plan years beginning after
 12 December 31, 2006.

13 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 14 GAINED AGREEMENTS.—In the case of a plan main-
 15 tained pursuant to 1 or more collective bargaining
 16 agreements between employee representatives and 1
 17 or more employers ratified on or before the date of
 18 the enactment of this Act, paragraph (1) shall be
 19 applied to benefits pursuant to, and individuals cov-
 20 ered by, any such agreement by substituting for
 21 “December 31, 2006” the earlier of—

22 (A) the later of—

23 (i) December 31, 2007, or

24 (ii) the date on which the last of such
 25 collective bargaining agreements termi-

nates (determined without regard to any extension thereof after such date of enactment), or

(B) December 31, 2008.

SEC. 113. MATERIAL INFORMATION RELATING TO INVESTMENT IN EMPLOYER SECURITIES.

(a) AMENDMENTS OF INTERNAL REVENUE CODE.—

(1) IN GENERAL.—Section 4980H(e) of the Internal Revenue Code of 1986, as added by section 102, is amended—

(A) by striking “(e) NOTICE OF RIGHT TO DIVEST.—Not” and inserting:

“(e) NOTICE REQUIREMENTS.—

“(1) NOTICE OF RIGHT TO DIVEST.—Not”,

(B) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B) and adjusting all margins accordingly, and

(C) by adding at the end the following new paragraph:

“(2) MATERIAL INFORMATION.—

“(A) IN GENERAL.—The administrator of a defined contribution plan (other than a one-participant retirement plan) shall provide to each participant and beneficiary who has the right to direct the investment of assets in his or

her account in employer securities with all reports, proxy statements, and other communications regarding investment of such assets in employer securities to the extent that such reports, statements, and communications are required to be provided by the plan sponsor to investors in connection with such an investment under applicable securities laws. Such reports, statements, and communications may be delivered in written, electronic, or other appropriate form to the extent such form is reasonably accessible to participants and beneficiaries.

“(B) PLAN SPONSOR.—If any information required to be provided under paragraph (1) is maintained by the plan sponsor, the plan sponsor shall transmit such information to the plan administrator.”

(2) CONFORMING AMENDMENTS.—

(A) Section 4980H(c)(3) of such Code, as so added, is amended by adding at the end the following new subparagraph:

“(C) SEPARATE APPLICATION.—This paragraph shall be applied separately for failures to meet the requirements of subsection (e)(1) and

failures to meet the requirements of subsection (e)(2).”

(B)(i) The heading for section 4980H of such Code, as so added, is amended by striking “**NOTICE OF FREEDOM TO DIVEST EMPLOYER SECURITIES**” and inserting “**INFORMATION REGARDING INVESTMENT IN EMPLOYER SECURITIES**”.

(ii) The item relating to section 4980H in the table of sections for chapter 43 of such Code, as so added, is amended by striking “notice of freedom to divest employer securities” and inserting “information regarding investment in employer securities”.

(b) AMENDMENTS OF ERISA.—

(1) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1024) as amended by sections 102 and 112, is amended by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the following new subsection:

“(f) PROVIDING OF MATERIAL INFORMATION.—

“(1) IN GENERAL.—The administrator of an individual account plan (other than a one-participant retirement plan described in section 101(i)(8)(B))

1 shall provide to each participant and beneficiary who
2 has the right to direct the investment of assets in
3 his or her account in employer securities with all re-
4 ports, proxy statements, and other communications
5 regarding investment of such assets in employer se-
6 curities to the extent that such reports, statements,
7 and communications are required to be provided by
8 the plan sponsor to investors in connection with such
9 an investment under applicable securities laws. Such
10 reports, statements, and communications may be de-
11 livered in written, electronic, or other appropriate
12 form to the extent such form is reasonably accessible
13 to participants and beneficiaries.

14 “(2) PLAN SPONSOR.—If any information re-
15 quired to be provided under paragraph (1) is main-
16 tained by the plan sponsor, the plan sponsor shall
17 transmit such information to the plan adminis-
18 trator.”

19 (2) ENFORCEMENT.—Section 502 of such Act
20 (29 U.S.C. 1132) is amended—

21 (A) in subsection (a)(6), by striking “(6),
22 or (7)” and inserting “(6), (7), or (8)”;

23 (B) by redesignating paragraph (8) of sub-
24 section (c) as paragraph (9); and

1 (C) by inserting after paragraph (7) of
 2 subsection (c) the following new paragraph:

3 “(8) The Secretary may assess a civil penalty against
 4 any person of up to \$1,000 a day from the date of the
 5 person’s failure or refusal to comply with the requirements
 6 of section 104(f) until such failure or refusal is corrected.”

7 (c) EFFECTIVE DATE.—

8 (1) IN GENERAL.—The amendments made by
 9 this section shall apply to plan years beginning after
 10 December 31, 2005.

11 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 12 GAINED AGREEMENTS.—In the case of a plan main-
 13 tained pursuant to 1 or more collective bargaining
 14 agreements between employee representatives and 1
 15 or more employers ratified on or before the date of
 16 the enactment of this Act, paragraph (1) shall be
 17 applied to benefits pursuant to, and individuals cov-
 18 ered by, any such agreement by substituting for
 19 “December 31, 2005” the earlier of—

20 (A) the later of—

21 (i) December 31, 2006, or

22 (ii) the date on which the last of such
 23 collective bargaining agreements termi-
 24 nates (determined without regard to any

1 extension thereof after such date of enact-
 2 ment), or

3 (B) December 31, 2007.

4 **SEC. 114. FIDUCIARY RULES FOR PLAN SPONSORS DESIG-**
 5 **NATING INDEPENDENT INVESTMENT ADVIS-**
 6 **ERS.**

7 (a) IN GENERAL.—Section 404 of the Employee Re-
 8 tirement Income Security Act of 1974 (29 U.S.C. 1104)
 9 is amended by adding at the end the following new sub-
 10 section:

11 “(e) INDEPENDENT INVESTMENT ADVISER.—

12 “(1) IN GENERAL.—In the case of an individual
 13 account plan which permits a plan participant or
 14 beneficiary to direct the investment of the assets in
 15 his or her account, if a plan sponsor or other person
 16 who is a fiduciary designates and monitors a quali-
 17 fied investment adviser pursuant to the requirements
 18 of paragraph (3), such fiduciary—

19 “(A) shall be deemed to have satisfied the
 20 requirements under this section for the prudent
 21 designation and periodic review of an invest-
 22 ment adviser with whom the plan sponsor or
 23 other person who is a fiduciary enters into an
 24 arrangement for the provision of advice referred
 25 to in section 3(21)(A)(ii),

1 “(B) shall not be liable under this section
 2 for any loss, or by reason of any breach, with
 3 respect to the provision of investment advice
 4 given by such adviser to any plan participant or
 5 beneficiary, and

6 “(C) shall not be liable for any co-fiduciary
 7 liability under subsections (a)(2) and (b) of sec-
 8 tion 405 with respect to the provision of invest-
 9 ment advice given by such adviser to any plan
 10 participant or beneficiary.

11 “(2) QUALIFIED INVESTMENT ADVISER.—

12 “(A) IN GENERAL.—For purposes of this
 13 subsection, the term ‘qualified investment ad-
 14 viser’ means, with respect to a plan, a person—

15 “(i) who is a fiduciary of the plan by
 16 reason of the provision of investment ad-
 17 vice by such person to a plan participant
 18 or beneficiary;

19 “(ii) who—

20 “(I) is registered as an invest-
 21 ment adviser under the Investment
 22 Advisers Act of 1940 (15 U.S.C. 80b-
 23 1 et seq.),

24 “(II) is registered as an invest-
 25 ment adviser under the laws of the

1 State in which such adviser maintains
2 the principal office and place of busi-
3 ness of such adviser, but only if such
4 State laws are consistent with section
5 203A of the Investment Advisers Act
6 of 1940 (15 U.S.C. 80b–3a),

7 “(III) is a bank or similar finan-
8 cial institution referred to in section
9 408(b)(4),

10 “(IV) is an insurance company
11 qualified to do business under the
12 laws of a State, or

13 “(V) is any other comparably
14 qualified entity which satisfies such
15 criteria as the Secretary determines
16 appropriate, consistent with the pur-
17 poses of this subsection, and

18 “(iii) who meets the requirements of
19 subparagraph (B).

20 “(B) ADVISER REQUIREMENTS.—The re-
21 quirements of this subparagraph are met if
22 every individual employed (or otherwise com-
23 pensated) by a person described in subpara-
24 graph (A)(ii) who provides investment advice on

1 behalf of such person to any plan participant or
2 beneficiary is—

3 “(i) an individual described in sub-
4 clause (I) of subparagraph (A)(ii),

5 “(ii) an individual described in sub-
6 clause (II) of subparagraph (A)(ii), but
7 only if such State has an examination re-
8 quirement to qualify for registration,

9 “(iii) registered as a broker or dealer
10 under the Securities Exchange Act of 1934
11 (15 U.S.C. 78a et seq.),

12 “(iv) a registered representative as de-
13 scribed in section 3(a)(18) of the Securi-
14 ties Exchange Act of 1934 (15 U.S.C.
15 78c(a)(18)) or section 202(a)(17) of the
16 Investment Advisers Act of 1940 (15
17 U.S.C. 80b–2(a)(17)), or

18 “(v) any other comparably qualified
19 individual who satisfies such criteria as the
20 Secretary determines appropriate, con-
21 sistent with the purposes of this sub-
22 section.

23 “(3) VERIFICATION REQUIREMENTS.—The re-
24 quirements of this paragraph are met if—

1 “(A) the plan sponsor or other person who
2 is a fiduciary in designating a qualified invest-
3 ment adviser receives at the time of the des-
4 ignation, and annually thereafter, a written
5 verification from the qualified investment ad-
6 viser that the investment adviser—

7 “(i) is and remains a qualified invest-
8 ment adviser,

9 “(ii) acknowledges that the investment
10 adviser is a fiduciary with respect to the
11 plan and is solely responsible for its invest-
12 ment advice,

13 “(iii) has reviewed the plan documents
14 (including investment options) and has de-
15 termined that its relationship with the plan
16 and the investment advice provided to any
17 plan participant or beneficiary, including
18 any fees or other compensation it will re-
19 ceive, will not constitute a violation of sec-
20 tion 406,

21 “(iv) will, in providing investment ad-
22 vice to any participant or beneficiary, con-
23 sider any employer securities or employer
24 real property allocated to his or her ac-
25 count, and

1 “(v) has the necessary insurance cov-
2 erage (as determined by the Secretary) for
3 any claim by any plan participant or bene-
4 ficiary,

5 “(B) the plan sponsor or other person who
6 is a fiduciary in designating a qualified invest-
7 ment adviser reviews the documents described
8 in paragraph (4) provided by such adviser and
9 determines that there is no material reason not
10 to enter into an arrangement for the provision
11 of advice by such qualified investment adviser,
12 and

13 “(C) the plan sponsor or other person who
14 is a fiduciary in designating a qualified invest-
15 ment adviser, within 30 days of having informa-
16 tion brought to its attention that the invest-
17 ment adviser is no longer qualified or that a
18 substantial number of plan participants or
19 beneficiaries have raised concerns about the
20 services being provided by the investment ad-
21 viser—

22 “(i) investigates such information and
23 concerns, and

24 “(ii) determines that there is no mate-
25 rial reason not to continue the designation

1 of the adviser as a qualified investment ad-
2 viser.

3 “(4) DOCUMENTATION.—A qualified investment
4 adviser shall provide the following documents to the
5 plan sponsor or other person who is a fiduciary in
6 designating the adviser:

7 “(A) The contract with the plan sponsor or
8 other person who is a fiduciary for the services
9 to be provided by the investment adviser to the
10 plan participants and beneficiaries.

11 “(B) A disclosure as to any fees or other
12 compensation that will be received by the in-
13 vestment adviser for the provision of such in-
14 vestment advice and as to any fees and other
15 compensation that will be received as a result of
16 a participant’s investment election.

17 “(C) The Uniform Application for Invest-
18 ment Adviser Registration as filed with the Se-
19 curities and Exchange Commission or a sub-
20 stantially similar disclosure application as de-
21 termined by and filed with the Secretary.

22 “(5) TREATMENT AS FIDUCIARY.—Any quali-
23 fied investment adviser that acknowledges it is a fi-
24 duciary pursuant to paragraph (3)(A)(ii) shall be
25 deemed a fiduciary under this part with respect to

1 the provision of investment advice to a plan partici-
 2 pant or beneficiary.”

3 (b) FIDUCIARY LIABILITY.—Section 404(c)(1)(B) of
 4 such Act is amended by inserting “(other than a qualified
 5 investment adviser)” after “fiduciary”.

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply with respect to investment advisers
 8 designated after the date of the enactment of this Act.

9 **SEC. 115. TREATMENT OF QUALIFIED RETIREMENT PLAN-**
 10 **NING SERVICES.**

11 (a) IN GENERAL.—Subsection (m) of section 132 of
 12 the Internal Revenue Code of 1986 (defining qualified re-
 13 tirement services) is amended by adding at the end the
 14 following new paragraph:

15 “(4) NO CONSTRUCTIVE RECEIPT.—

16 “(A) IN GENERAL.—No amount shall be
 17 included in the gross income of any employee
 18 solely because the employee may choose between
 19 any qualified retirement planning services pro-
 20 vided by an eligible investment advisor and
 21 compensation which would otherwise be includ-
 22 ible in the gross income of such employee. The
 23 preceding sentence shall apply to highly com-
 24 pensated employees only if the choice described
 25 in such sentence is available on substantially

1 the same terms to each member of the group of
2 employees normally provided education and in-
3 formation regarding the employer's qualified
4 employer plan.

5 “(B) LIMITATION.—The maximum amount
6 which may be excluded under subparagraph (A)
7 with respect to any employee for any taxable
8 year shall not exceed \$1,000.

9 “(C) ELIGIBLE INVESTMENT ADVISER.—
10 For purposes of this paragraph, the term ‘eligi-
11 ble investment adviser’ means, with respect to
12 a plan, a person—

13 “(i) who—

14 “(I) is registered as an invest-
15 ment adviser under the Investment
16 Advisers Act of 1940 (15 U.S.C. 80b–
17 1 et seq.),

18 “(II) is registered as an invest-
19 ment adviser under the laws of the
20 State in which such adviser maintains
21 the principal office and place of busi-
22 ness of such adviser, but only if such
23 State laws are consistent with section
24 203A of the Investment Advisers Act
25 of 1940 (15 U.S.C. 80b–3a),

1 “(III) is a bank or similar finan-
2 cial institution referred to in section
3 408(b)(4),

4 “(IV) is an insurance company
5 qualified to do business under the
6 laws of a State, or

7 “(V) is any other comparably
8 qualified entity which satisfies such
9 criteria as the Secretary determines
10 appropriate, consistent with the pur-
11 poses of this subsection, and

12 “(ii) who meets the requirements of
13 subparagraph (D).

14 “(D) ADVISER REQUIREMENTS.—The re-
15 quirements of this subparagraph are met if
16 every individual employed (or otherwise com-
17 pensated) by a person described in subpara-
18 graph (C)(i) who provides investment advice on
19 behalf of such person to any plan participant or
20 beneficiary is—

21 “(i) an individual described in sub-
22 clause (I) of subparagraph (C)(i),

23 “(ii) an individual described in sub-
24 clause (II) of subparagraph (C)(i), but

only if such State has an examination requirement to qualify for registration,

“(iii) registered as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.),

“(iv) a registered representative as described in section 3(a)(18) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(18)) or section 202(a)(17) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(17)), or

“(v) any other comparably qualified individual who satisfies such criteria as the Secretary determines appropriate, consistent with the purposes of this paragraph.

“(E) TERMINATION.—This paragraph shall not apply to taxable years beginning after December 31, 2010.”

(b) CONFORMING AMENDMENTS.—

(1) Section 403(b)(3)(B) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

(2) Section 414(s)(2) of such Code is amended by inserting “132(m)(4),” after “132(f)(4),”.

1 (3) Section 415(c)(3)(D)(ii) of such Code is
 2 amended by inserting “132(m)(4),” after
 3 “132(f)(4),”.

4 (c) EFFECTIVE DATE.—The amendments made by
 5 this section shall apply to taxable years beginning after
 6 December 31, 2005.

7 **Subtitle C—Protection of Pension** 8 **Plan Participants**

9 **SEC. 121. NOTICE TO PARTICIPANTS OR BENEFICIARIES OF** 10 **BLACKOUT PERIODS.**

11 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

12 (1) EXCISE TAX.—

13 (A) IN GENERAL.—Chapter 43 of the In-
 14 ternal Revenue Code of 1986 (relating to quali-
 15 fied pension, etc., plans), as amended by this
 16 Act, is amended by adding at the end the fol-
 17 lowing new section:

18 **“SEC. 4980J. FAILURE OF CERTAIN DEFINED CONTRIBU-** 19 **TION PLANS TO PROVIDE NOTICE OF BLACK-** 20 **OUT PERIODS.**

21 “(a) IMPOSITION OF TAX.—There is hereby imposed
 22 a tax on the failure of any defined contribution plan to
 23 which this section applies to meet the requirements of sub-
 24 section (e) with respect to any participant or beneficiary.

25 “(b) AMOUNT OF TAX.—

1 “(1) IN GENERAL.—The amount of the tax im-
2 posed by subsection (a) on any failure with respect
3 to any participant or beneficiary shall be \$100 for
4 each day in the noncompliance period with respect to
5 the failure.

6 “(2) NONCOMPLIANCE PERIOD.—For purposes
7 of this section, the term ‘noncompliance period’
8 means, with respect to any failure, the period begin-
9 ning on the date the failure first occurs and ending
10 on the date the notice to which the failure relates is
11 provided or the failure is otherwise corrected.

12 “(c) LIMITATIONS ON AMOUNT OF TAX.—

13 “(1) TAX NOT TO APPLY WHERE FAILURE NOT
14 DISCOVERED AND REASONABLE DILIGENCE EXER-
15 CISED.—No tax shall be imposed by subsection (a)
16 on any failure during any period for which it is es-
17 tablished to the satisfaction of the Secretary that
18 any person subject to liability for tax under sub-
19 section (d) did not know that the failure existed and
20 exercised reasonable diligence to meet the require-
21 ments of subsection (e).

22 “(2) TAX NOT TO APPLY TO FAILURES COR-
23 RECTED AS SOON AS REASONABLY PRACTICABLE.—
24 No tax shall be imposed by subsection (a) on any
25 failure if—

1 “(A) any person subject to liability for the
2 tax under subsection (d) exercised reasonable
3 diligence to meet the requirements of subsection
4 (e), and

5 “(B) such person provides the notice de-
6 scribed in subsection (e) as soon as reasonably
7 practicable after the first date such person
8 knew, or exercising reasonable diligence should
9 have known, that such failure existed.

10 “(3) OVERALL LIMITATION FOR UNINTEN-
11 TIONAL FAILURES.—

12 “(A) IN GENERAL.—If the person subject
13 to liability for tax under subsection (d) exer-
14 cised reasonable diligence to meet the require-
15 ments of subsection (e), the tax imposed by
16 subsection (a) for failures during the taxable
17 year of the employer (or, in the case of a multi-
18 employer plan, the taxable year of the trust
19 forming part of the plan) shall not exceed
20 \$500,000. For purposes of the preceding sen-
21 tence, all multiemployer plans of which the
22 same trust forms a part shall be treated as 1
23 plan.

24 “(B) TAXABLE YEARS IN THE CASE OF
25 CERTAIN CONTROLLED GROUPS.—For purposes

1 of this paragraph, if all persons who are treated
 2 as a single employer for purposes of this section
 3 do not have the same taxable year, the taxable
 4 years taken into account shall be determined
 5 under principles similar to the principles of sec-
 6 tion 1561.

7 “(4) WAIVER BY SECRETARY.—In the case of a
 8 failure which is due to reasonable cause and not to
 9 willful neglect, the Secretary may waive part or all
 10 of the tax imposed by subsection (a) to the extent
 11 that the payment of such tax would be excessive or
 12 otherwise inequitable relative to the failure involved.

13 “(d) LIABILITY FOR TAX.—The following shall be lia-
 14 ble for the tax imposed by subsection (a):

15 “(1) In the case of a plan not described in
 16 paragraph (2) or (3), the employer.

17 “(2) In the case of a multiemployer plan, the
 18 plan.

19 “(3) In the case of an arrangement described in
 20 subsection (e)(1)(B), the person required to provide
 21 the notice under subsection (e).

22 “(e) NOTICE OF BLACKOUT PERIODS TO PARTICI-
 23 PANT OR BENEFICIARY UNDER DEFINED CONTRIBUTION
 24 PLAN.—

25 “(1) IN GENERAL.—

1 “(A) DUTIES OF PLAN ADMINISTRATOR.—

2 In advance of the commencement of any black-
3 out period with respect to a defined contribu-
4 tion plan, the plan administrator shall notify
5 the plan participants and beneficiaries who are
6 affected by such action in accordance with this
7 subsection.

8 “(B) SPECIAL RULE FOR CERTAIN ANNU-
9 ITIES.—In the case of an annuity contract or
10 custodial account described in section 403(b)
11 which is not a plan established or maintained
12 by the employer, the notice shall be furnished
13 by the issuer of the contract, the custodian of
14 the account, or such other person as is specified
15 by the Secretary.

16 “(2) NOTICE REQUIREMENTS.—

17 “(A) IN GENERAL.—The notices described
18 in paragraph (1) shall be written in a manner
19 calculated to be understood by the average plan
20 participant and shall include—

21 “(i) the reasons for the blackout pe-
22 riod,

23 “(ii) an identification of the invest-
24 ments and other rights affected,

1 “(iii) the expected beginning date and
2 length of the blackout period,

3 “(iv) in the case of investments af-
4 fected, a statement that the participant or
5 beneficiary should evaluate the appro-
6 priateness of their current investment deci-
7 sions in light of their inability to direct or
8 diversify assets credited to their accounts
9 during the blackout period, and

10 “(v) such other matters as the Sec-
11 retary of Labor may require by regulation.

12 “(B) NOTICE TO PARTICIPANTS AND
13 BENEFICIARIES.—Except as otherwise provided
14 in this subsection, notices described in para-
15 graph (1) shall be furnished to all participants
16 and beneficiaries under the plan to whom the
17 blackout period applies at least 30 days in ad-
18 vance of the blackout period.

19 “(C) EXCEPTION TO 30-DAY NOTICE RE-
20 QUIREMENT.—In any case in which—

21 “(i) a deferral of the blackout period
22 would violate the requirements of subpara-
23 graph (A) or (B) of section 404(a)(1) of
24 the Employee Retirement Income Security

1 Act of 1974, and a fiduciary of the plan
2 reasonably so determines in writing, or

3 “(ii) the inability to provide the 30-
4 day advance notice is due to events that
5 were unforeseeable or circumstances be-
6 yond the reasonable control of the plan ad-
7 ministrator, and a fiduciary of the plan
8 reasonably so determines in writing,

9 subparagraph (B) shall not apply, and the no-
10 tice shall be furnished to all participants and
11 beneficiaries under the plan to whom the black-
12 out period applies as soon as reasonably pos-
13 sible under the circumstances unless such a no-
14 tice in advance of the termination of the black-
15 out period is impracticable.

16 “(D) WRITTEN NOTICE.—The notice re-
17 quired to be provided under this subsection
18 shall be in writing, except that such notice may
19 be in electronic or other form to the extent that
20 such form is reasonably accessible to the recipi-
21 ent.

22 “(E) NOTICE TO ISSUERS OF EMPLOYER
23 SECURITIES SUBJECT TO BLACKOUT PERIOD.—
24 In the case of any blackout period in connection
25 with a defined contribution plan, the plan ad-

1 administrator shall provide timely notice of such
2 blackout period to the issuer of any employer
3 securities subject to such blackout period.

4 “(3) EXCEPTION FOR BLACKOUT PERIODS
5 WITH LIMITED APPLICABILITY.—In any case in
6 which the blackout period applies only to 1 or more
7 participants or beneficiaries in connection with a
8 merger, acquisition, divestiture, or similar trans-
9 action involving the plan or plan sponsor and occurs
10 solely in connection with becoming or ceasing to be
11 a participant or beneficiary under the plan by reason
12 of such merger, acquisition, divestiture, or trans-
13 action, the requirement of this subsection that the
14 notice be provided to all participants and bene-
15 ficiaries shall be treated as met if the notice required
16 under paragraph (1) is provided to such participants
17 or beneficiaries to whom the blackout period applies
18 as soon as reasonably practicable.

19 “(4) CHANGES IN LENGTH OF BLACKOUT PE-
20 RIOD.—If, following the furnishing of the notice pur-
21 suant to this subsection, there is a change in the be-
22 ginning date or length of the blackout period (speci-
23 fied in such notice pursuant to paragraph
24 (2)(A)(iii)), the administrator shall provide affected
25 participants and beneficiaries notice of the change as

1 soon as reasonably practicable. In relation to the ex-
 2 tended blackout period, such notice shall meet the
 3 requirements of paragraph (2)(D) and shall specify
 4 any material change in the matters referred to in
 5 clauses (i) through (v) of paragraph (2)(A).

6 “(5) REGULATORY EXCEPTIONS.—The Sec-
 7 retary of Labor may provide by regulation for addi-
 8 tional exceptions to the requirements of this sub-
 9 section which the Secretary of Labor determines are
 10 in the interests of participants and beneficiaries.

11 “(6) GUIDANCE AND MODEL NOTICES.—The
 12 Secretary of Labor shall issue guidance and model
 13 notices which meet the requirements of this sub-
 14 section.

15 “(7) BLACKOUT PERIOD.—For purposes of this
 16 subsection—

17 “(A) IN GENERAL.—The term ‘blackout
 18 period’ means, in connection with a defined con-
 19 tribution plan, any period for which any ability
 20 of participants or beneficiaries under the plan,
 21 which is otherwise available under such plan, to
 22 direct or diversify assets credited to their ac-
 23 counts, to obtain loans from the plan, or to ob-
 24 tain distributions from the plan is temporarily
 25 suspended, limited, or restricted, if such sus-

pension, limitation, or restriction is for any period of more than 3 consecutive business days.

“(B) EXCLUSIONS.—The term ‘blackout period’ does not include a suspension, limitation, or restriction—

“(i) which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934),

“(ii) which is a change to the plan which provides for a regularly scheduled suspension, limitation, or restriction which is disclosed to participants or beneficiaries through any summary of material modifications, any materials describing specific investment alternatives under the plan, or any changes thereto, or

“(iii) which applies only to 1 or more individuals, each of whom is the participant, an alternate payee (as defined in section 414(p)(8)), or any other beneficiary pursuant to a qualified domestic relations order (as defined in section 414(p)(1)(A)).

“(8) DEFINED CONTRIBUTION PLAN TO WHICH SECTION APPLIES.—

1 “(A) IN GENERAL.—Except as provided in
 2 this paragraph, this section applies to any de-
 3 fined contribution plan described in clause (i),
 4 (ii), or (iv) of section 219(g)(5)(A).

5 “(B) EXCEPTION FOR ONE-PARTICIPANT
 6 RETIREMENT PLAN.—This section shall not
 7 apply to a one-participant retirement plan (as
 8 defined in section 401(a)(35)(E)(iv)).

9 “(C) EXCEPTION FOR GOVERNMENTAL
 10 AND CHURCH PLANS.—This section shall not
 11 apply to governmental and church plans. For
 12 purposes of this subparagraph, the terms ‘gov-
 13 ernmental plan’ and ‘church plan’ have the
 14 meanings given such terms by section 414.”

15 (B) AGGREGATION.—Section 414(t) of
 16 such Code, as amended by this Act, is amended
 17 by striking “or 4980I” and inserting “4980I, or
 18 4980J”.

19 (C) CLERICAL AMENDMENT.—The table of
 20 sections for chapter 43 of such Code is amend-
 21 ed by adding at the end the following new item:

“Sec. 4980J. Failure of applicable defined contribution plan to provide notice
 of blackout periods.”.

22 (2) EFFECTIVE DATE.—The amendments made
 23 by this subsection shall apply to failures after the
 24 date of the enactment of this Act.

1 (b) AMENDMENTS OF ERISA.—

2 (1) IN GENERAL.—Section 101(i) of the Em-
 3 ployee Retirement Income Security Act of 1974 (29
 4 U.S.C. 1021(i)) is amended—

5 (A) by striking “the terms of” in para-
 6 graph (7)(A),

7 (B) by striking clause (i) of paragraph
 8 (8)(B) and inserting:

9 “(i) on the first day of the plan
 10 year—

11 “(I) covered only one individual
 12 (or the individual and the individual’s
 13 spouse) and the individual owned 100
 14 percent of the plan sponsor (whether
 15 or not incorporated), or

16 “(II) covered only one or more
 17 partners (or partners and their
 18 spouses) in the plan sponsor,”

19 (C) by striking “employer” and “employ-
 20 er’s” in paragraph (8)(B)(iii) and inserting “in-
 21 dividual” and “individual’s”, respectively,

22 (D) by striking “leases employees” in
 23 paragraph (8)(B)(v) and inserting “uses the
 24 services of leased employees (within the mean-

1 ing of section 414(n) of the Internal Revenue
 2 Code of 1986)”, and

3 (E) by adding at the end of paragraph
 4 (8)(B) the following flush sentence:

5 “For purposes of this paragraph, an individual
 6 shall be treated as a partner if the individual is
 7 so treated under section 401(a)(35)(E)(iv) of
 8 the Internal Revenue Code of 1986.”

9 (2) EFFECTIVE DATE.—The amendments made
 10 by this subsection shall take effect as if included in
 11 the provisions of section 306 of Public Law 107–204
 12 (116 Stat. 745 et seq.).

13 **SEC. 122. ALLOWANCE OF CATCHUP PAYMENTS.**

14 (a) IN GENERAL.—Section 219(b)(5) of the Internal
 15 Revenue Code of 1986 (relating to deductible amount) is
 16 amended by redesignating subparagraph (C) as subpara-
 17 graph (D) and by inserting after subparagraph (B) the
 18 following new subparagraph:

19 “(C) CATCHUP CONTRIBUTIONS FOR CER-
 20 TAIN INDIVIDUALS.—

21 “(i) IN GENERAL.—In the case of an
 22 eligible individual who elects to make a
 23 qualified retirement contribution in addi-
 24 tion to the deductible amount determined
 25 under subparagraph (A)—

1 “(I) the deductible amount for
2 any taxable year shall be increased by
3 an amount equal to 3 times the appli-
4 cable amount determined under sub-
5 paragraph (B) for such taxable year,
6 and

7 “(II) subparagraph (B) shall not
8 apply.

9 “(ii) ELIGIBLE INDIVIDUAL.—For
10 purposes of this subparagraph, the term
11 ‘eligible individual’ means, with respect to
12 any taxable year, any individual who was a
13 qualified participant in a qualified cash or
14 deferred arrangement (as defined in sec-
15 tion 401(k)) of an employer described in
16 clause (ii) under which the employer
17 matched at least 50 percent of the employ-
18 ee’s contributions to such arrangement
19 with stock of such employer.

20 “(iii) EMPLOYER DESCRIBED.—An
21 employer is described in this clause if, in
22 any taxable year preceding the taxable year
23 described in clause (ii)—

24 “(I) such employer (or any con-
25 trolling corporation of such employer)

1 was a debtor in a case under title 11
2 of the United States Code, or similar
3 Federal or State law, and

4 “(II) such employer (or any other
5 person) was subject to an indictment
6 or conviction resulting from business
7 transactions related to such case.

8 “(iv) QUALIFIED PARTICIPANT.—For
9 purposes of clause (ii), the term ‘qualified
10 participant’ means any eligible individual
11 who was a participant in the cash or de-
12 ferred arrangement described in clause (i)
13 on the date that is 6 months before the fil-
14 ing of the case described in clause (iii).

15 “(v) TERMINATION.—This subpara-
16 graph shall not apply to taxable years be-
17 ginning after December 31, 2009.”

18 (b) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to taxable years beginning after
20 December 31, 2004.

1 **TITLE II—PROVISIONS RELAT-**
 2 **ING TO FUNDING, DEDUC-**
 3 **TIONS, AND THE PENSION**
 4 **BENEFIT GUARANTY COR-**
 5 **PORATION**

6 **Subtitle A—Replacement of Inter-**
 7 **est Rate on 30-Year Treasury Se-**
 8 **curities**

9 **SEC. 201. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**
 10 **PURPOSES OF FUNDING AND PBGC PREMIUM**
 11 **RATES.**

12 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—

13 (1) IN GENERAL.—Section 412(b)(5)(B) of the
 14 Internal Revenue Code of 1986 is amended to read
 15 as follows:

16 “(B) DETERMINATION OF CURRENT LI-
 17 ABILITY.—Notwithstanding subsection (c)(3), a
 18 plan’s current liability (including for purposes
 19 of determining a plan’s required contribution
 20 under subsection (l)) for any plan year shall be
 21 determined—

22 “(i) in the case of plan years begin-
 23 ning in 2006, by using an interest rate de-
 24 termined in accordance with the rules pre-
 25 scribed under subsection (o)(1),

1 “(ii) in the case of plan years begin-
 2 ning in 2007, 2008, 2009, or 2010, by
 3 using the phase-in yield curve method (as
 4 defined in subsection (o)(3)), and

5 “(iii) in the case of plan years begin-
 6 ning after 2010, by using the yield curve
 7 method (as defined in subsection (o)(2)).”

8 (2) RULES RELATING TO CURRENT LIABILITY
 9 DETERMINATIONS.—Section 412 of such Code is
 10 amended by adding at the end the following new
 11 subsection:

12 “(o) RULES RELATING TO CURRENT LIABILITY DE-
 13 TERMINATIONS.—For purposes of subsection (b)(5)(B)—

14 “(1) RULES RELATING TO INTEREST RATES
 15 FOR 2006.—

16 “(A) DETERMINATION OF RATE.—

17 “(i) IN GENERAL.—If any rate of in-
 18 terest used under the plan to determine
 19 cost is not within the permissible range,
 20 the plan shall establish a new rate of inter-
 21 est within the permissible range.

22 “(ii) PERMISSIBLE RANGE.—For pur-
 23 poses of clause (i), the term ‘permissible
 24 range’ means a rate of interest which is
 25 not more than, and not more than 10 per-

cent below, the weighted average of conservative long-term corporate bond rates during the 4-year period ending on the last day before the beginning of the plan year.

“(B) CONSERVATIVE LONG-TERM CORPORATE BOND RATES.—The Secretary shall, by regulation, prescribe a method for periodically determining conservative long-term corporate bond rates for purposes of this paragraph. Such rates shall reflect rates of interest on amounts invested in high-quality, long-term corporate bonds and shall be based on the use of 1 or more indices, as determined from time to time by the Secretary.

“(2) YIELD CURVE METHOD.—For purposes of this subsection, the yield curve method is a method under which current liability is determined—

“(A) by using interest rates drawn from a yield curve which is prescribed by the Secretary and which reflects high-quality corporate bonds, and

“(B) by matching the timing of the expected benefit payments under the plan to the interest rates on such yield curve.

The Secretary shall publish any yield curve prescribed under this paragraph and the method by which the yield curve was established.

“(3) PHASE-IN YIELD CURVE METHOD.—

“(A) IN GENERAL.—The current liability under the phase-in yield curve method shall be equal to the sum of—

“(i) the applicable percentage of current liability determined under the yield curve method described in paragraph (2), and

“(ii) the product of the current liability determined by using the interest rate rules described in paragraph (1) and a percentage equal to 100 percent minus the applicable percentage.

“(B) APPLICABLE PERCENTAGE.—For purposes of subparagraph (A), the applicable percentage shall be determined in accordance with the following table:

“In the case of years beginning in—	The applicable percentage is—
2007	20
2008	40
2009	60
2010	80.

“(4) SIMPLIFIED METHODS.—

1 “(A) ESTABLISHMENT BY SECRETARY.—

2 The Secretary shall prescribe 1 or more sim-
3 plified methods under which current liability
4 can be determined by substituting any such
5 method for the yield curve method for purposes
6 of paragraphs (2) and (3).

7 “(B) USE OF SIMPLIFIED METHOD.—A

8 plan (other than a multiemployer plan) may use
9 a simplified method established under subpara-
10 graph (A) if, on each day during the preceding
11 plan year, the plan had no more than 100 par-
12 ticipants. The aggregation rule under sub-
13 section (l)(6)(C) shall apply for purposes of this
14 subparagraph.”

15 (3) ADDITIONAL FUNDING REQUIREMENTS.—

16 Section 412(l)(7)(C)(i) of such Code is amended to
17 read as follows:

18 “(i) CURRENT LIABILITY.—Current li-
19 ability under this subsection for any plan
20 year shall be determined under the rules or
21 method provided under subsection (b)(5)
22 for the plan year.”

23 (b) AMENDMENTS OF ERISA.—

24 (1) IN GENERAL.—Section 302(b)(5)(B) of the
25 Employee Retirement Income Security Act of 1974

(29 U.S.C. 1082(b)(5)(B)) is amended to read as follows:

“(B) DETERMINATION OF CURRENT LIABILITY.—Notwithstanding subsection (c)(3), a plan’s current liability (including for purposes of determining a plan’s required contribution under subsection (d)) for any plan year shall be determined—

“(i) in the case of plan years beginning in 2006, by using an interest rate determined in accordance with the rules prescribed under subsection (h)(1),

“(ii) in the case of plan years beginning in 2007, 2008, 2009, or 2010, by using the phase-in yield curve method (as defined in subsection (h)(3)), and

“(iii) in the case of plan years beginning after 2010, by using the yield curve method (as defined in subsection (h)(2)).”

(2) RULES RELATING TO CURRENT LIABILITY DETERMINATIONS.—Section 302 of such Act (29 U.S.C. 1082) is amended by redesignating subsection (h) as subsection (i) and by inserting after subsection (g) the following new subsection:

1 “(h) RULES RELATING TO CURRENT LIABILITY DE-
2 TERMINATIONS.—For purposes of subsection (b)(5)(B)—

3 “(1) RULES RELATING TO INTEREST RATES
4 FOR 2006.—

5 “(A) DETERMINATION OF RATE.—

6 “(i) IN GENERAL.—If any rate of in-
7 terest used under the plan to determine
8 cost is not within the permissible range,
9 the plan shall establish a new rate of inter-
10 est within the permissible range.

11 “(ii) PERMISSIBLE RANGE.—For pur-
12 poses of clause (i), the term ‘permissible
13 range’ means a rate of interest which is
14 not more than, and not more than 10 per-
15 cent below, the weighted average of con-
16 servative long-term corporate bond rates
17 during the 4-year period ending on the last
18 day before the beginning of the plan year.

19 “(B) CONSERVATIVE LONG-TERM COR-
20 PORATE BOND RATES.—The Secretary of the
21 Treasury shall, by regulation, prescribe a meth-
22 od for periodically determining conservative
23 long-term corporate bond rates for purposes of
24 this paragraph. Such rates shall reflect rates of
25 interest on amounts invested in high-quality,

1 long-term corporate bonds and shall be based
 2 on the use of 1 or more indices, as determined
 3 from time to time by the Secretary of the
 4 Treasury.

5 “(2) YIELD CURVE METHOD.—For purposes of
 6 this subsection, the yield curve method is a method
 7 under which current liability is determined—

8 “(A) by using interest rates drawn from a
 9 yield curve which is prescribed by the Secretary
 10 of the Treasury and which reflects high-quality
 11 corporate bonds, and

12 “(B) by matching the timing of the ex-
 13 pected benefit payments under the plan to the
 14 interest rates on such yield curve.

15 The Secretary of the Treasury shall publish any
 16 yield curve prescribed under this paragraph and the
 17 method by which the yield curve was established.

18 “(3) PHASE-IN YIELD CURVE METHOD.—

19 “(A) IN GENERAL.—The current liability
 20 under the phase-in yield curve method shall be
 21 equal to the sum of—

22 “(i) the applicable percentage of cur-
 23 rent liability determined under the yield
 24 curve method described in paragraph (2),
 25 and

1 “(ii) the product of the current liabil-
 2 ity determined by using the interest rate
 3 rules described in paragraph (1) and a per-
 4 centage equal to 100 percent minus the ap-
 5 plicable percentage.

6 “(B) APPLICABLE PERCENTAGE.—For
 7 purposes of subparagraph (A), the applicable
 8 percentage shall be determined in accordance
 9 with the following table:

“In the case of years beginning in—	The applicable percentage is—
2007	20
2008	40
2009	60
2010	80.

10 “(4) SIMPLIFIED METHODS.—

11 “(A) ESTABLISHMENT BY SECRETARY.—

12 The Secretary of the Treasury shall prescribe 1
 13 or more simplified methods under which current
 14 liability can be determined by substituting any
 15 such method for the yield curve method for pur-
 16 poses of paragraphs (2) and (3).

17 “(B) USE OF SIMPLIFIED METHOD.—A

18 plan (other than a multiemployer plan) may use
 19 a simplified method established under subpara-
 20 graph (A) if, on each day during the preceding
 21 plan year, the plan had no more than 100 par-
 22 ticipants. The aggregation rule under sub-

1 section (d)(6)(C) shall apply for purposes of
2 this subparagraph.”

3 (3) ADDITIONAL FUNDING REQUIREMENTS.—
4 Section 302(d)(7)(C)(i) of such Act (29 U.S.C.
5 1082(d)(7)(C)(i)) is amended to read as follows:

6 “(i) CURRENT LIABILITY.—Current li-
7 ability under this subsection for any plan
8 year shall be determined under the rules or
9 method provided under subsection (b)(5)
10 for the plan year.”

11 (4) PBGC PREMIUM RATES.—

12 (A) IN GENERAL.—Section
13 4006(a)(3)(E)(iii)(II) of such Act (29 U.S.C.
14 1306(a)(3)(E)(iii)(II)) is amended to read as
15 follows:

16 “(II) For purposes of deter-
17 mining unfunded current liability
18 under subclause (I), current liability
19 for any plan year shall be determined
20 under the rules or method provided
21 under section 302(b)(5) for the plan
22 year, except that for purposes of plan
23 years beginning in 2006, the interest
24 rate used shall be the conservative
25 long-term corporate bond rate for the

1 month preceding the month in which
 2 the plan year begins. For purposes of
 3 the preceding sentence, a plan may, in
 4 lieu of the yield curve method, use a
 5 simplified method under section
 6 302(h)(4) in applying paragraph (2)
 7 or (3) of section 302(h).”

8 (B) CONFORMING AMENDMENTS.—Section
 9 4006(a)(3)(E)(iii) of such Act (29 U.S.C.
 10 1306(a)(3)(E)(iii)) is amended by striking sub-
 11 clauses (III), (IV), and (V).

12 (c) CONFORMING CHANGES REGARDING QUARTERLY
 13 CONTRIBUTIONS.—

14 (1) AMENDMENT OF INTERNAL REVENUE
 15 CODE.—Section 412(m)(1)(B) of the Internal Rev-
 16 enue Code of 1986 (relating to quarterly contribu-
 17 tions) is amended by striking “(including adjust-
 18 ments under subsection (b)(5)(B))”.

19 (2) AMENDMENT OF ERISA.—Section
 20 302(e)(1)(B) of the Employee Retirement Income
 21 Security Act of 1974 (29 U.S.C. 1082(e)(1)(B)) is
 22 amended by striking “(including adjustments under
 23 subsection (b)(5)(B))”.

24 (d) EFFECTIVE DATES.—

1 (1) IN GENERAL.—Except as provided in para-
 2 graphs (2) and (3), the amendments made by this
 3 section shall apply to plan years beginning after De-
 4 cember 31, 2004

5 (2) LOOKBACK RULES.—For purposes of apply-
 6 ing subsections (d)(9)(B) and (e)(1) of section 302
 7 of the Employee Retirement Income Security Act of
 8 1974 and subsections (l)(9)(B) and (m)(1) of section
 9 412 of the Internal Revenue Code of 1986 to plan
 10 years beginning after December 31, 2004, the
 11 amendments made by this section may be applied as
 12 if such amendments had been in effect for all prior
 13 plan years. The Secretary of the Treasury may pre-
 14 scribe simplified assumptions which may be used in
 15 applying the amendments made by this section to
 16 such prior plan years.

17 **SEC. 202. REPLACEMENT OF 30-YEAR TREASURY RATE FOR**
 18 **CALCULATING LUMP-SUM DISTRIBUTIONS.**

19 (a) AMENDMENTS OF INTERNAL REVENUE CODE.—
 20 Section 417(e)(3)(A) of the Internal Revenue Code of
 21 1986 (relating to determination of present value) is
 22 amended—

23 (1) by striking “and the applicable interest
 24 rate.” in clause (i) and inserting “and by using—

1 “(I) the phase-in yield curve
 2 method in the case of plan years be-
 3 ginning in 2007, 2008, 2009, or
 4 2010, and

5 “(II) the yield curve method for
 6 years beginning after 2010.”, and

7 (2) by striking subclause (II) of clause (ii) and
 8 inserting:

9 “(II) YIELD CURVE METHODS.—
 10 The terms ‘yield curve method’ and
 11 ‘phase-in yield curve method’ have the
 12 meanings given such terms by para-
 13 graphs (2) and (3) of section 412(o),
 14 respectively, except that each such
 15 paragraph shall be applied by sub-
 16 stituting ‘present value’ for ‘current
 17 liability’ and in applying paragraph
 18 (3)(A)(ii) of section 412(o), the an-
 19 nual rate of interest on 30-year
 20 Treasury securities shall be sub-
 21 stituted for the interest rate under
 22 section 412(o)(1). A plan may, in lieu
 23 of the yield curve method, use a sim-
 24 plified method under section

1 412(o)(4) for purposes of applying
2 such paragraphs.”

3 (b) AMENDMENTS OF ERISA.—Section 205(g)(3)(A)
4 of the Employee Retirement Income Security Act of 1974
5 (29 U.S.C. 1055(g)(3)) is amended—

6 (1) by striking “and the applicable interest
7 rate.” in clause (i) and inserting “and by using—

8 “(I) the phase-in yield curve
9 method in the case of plan years be-
10 ginning in 2007, 2008, 2009, or
11 2010, and

12 “(II) the yield curve method for
13 years beginning after 2010.”, and

14 (2) by striking subclause (II) of clause (ii) and
15 inserting:

16 “(II) YIELD CURVE METHODS.—
17 The terms ‘yield curve method’ and
18 ‘phase-in yield curve method’ have the
19 meanings given such terms by para-
20 graphs (2) and (3) of section 302(h),
21 respectively, except that each such
22 paragraph shall be applied by sub-
23 stituting ‘present value’ for ‘current
24 liability’ and in applying paragraph
25 (3)(A)(ii) of section 302(h), the an-

1 nual rate of interest on 30-year
 2 Treasury securities shall be sub-
 3 stituted for the interest rate under
 4 section 302(h)(1). A plan may, in lieu
 5 of the yield curve method, use a sim-
 6 plified method under section
 7 302(h)(4) for purposes of applying
 8 such paragraphs.”

9 (c) EFFECTIVE DATES.—

10 (1) IN GENERAL.—The amendments made by
 11 this section shall apply to plan years beginning after
 12 December 31, 2006.

13 (2) SPECIAL RULE FOR CERTAIN OPTIONAL
 14 BENEFITS.—If—

15 (A) for the last plan year of a plan begin-
 16 ning in 2003, the plan provides that the appli-
 17 cable interest rate under section 417(e)(3) of
 18 the Internal Revenue Code of 1986 and section
 19 205(g)(3) of Employee Retirement Income Se-
 20 curity Act of 1974 shall be used for purposes
 21 of determining the amount of a benefit (other
 22 than the accrued benefit) to which such sections
 23 417(e)(3) and 205(g)(3) do not apply, and

24 (B) such plan is amended to provide that
 25 a rate other than the applicable interest rate

1 shall be used for such purposes and the first
 2 plan year for which such amendment is effective
 3 begins no later than January 1, 2007,
 4 such plan shall not fail to meet the requirements of
 5 section 411(d)(6) of the Internal Revenue Code of
 6 1986 and section 204(g) of Employee Retirement
 7 Income Security Act of 1974 by reason of such
 8 amendment.

9 **SEC. 203. SECTION 415 LIMITATION ON DEFINED BENEFIT**
 10 **PLANS.**

11 (a) IN GENERAL.—Section 415(b)(2)(E)(ii) of the
 12 Internal Revenue Code of 1986 (relating to limitation on
 13 certain assumptions) is amended to read as follows:

14 “(ii) For purposes of adjusting any
 15 benefit under subparagraph (B) for any
 16 form of benefit subject to section
 17 417(e)(3), ‘5.5 percent’ shall be sub-
 18 stituted for ‘5 percent’ in clause (i).”

19 (b) EFFECTIVE DATE.—The amendment made by
 20 this section shall apply to years beginning after December
 21 31, 2005.

1 **Subtitle B—Provisions Relating to**
 2 **Pension Plan Funding and De-**
 3 **ductions**

4 **SEC. 211. DEDUCTION LIMITS FOR PLAN CONTRIBUTIONS.**

5 (a) IN GENERAL.—Clause (i) of section 404(a)(1)(D)
 6 of the Internal Revenue Code of 1986 (relating to special
 7 rule in case of certain plans) is amended by striking “sec-
 8 tion 412(l)” and inserting “section 412(l)(8)(A), except
 9 that section 412(l)(8)(A) shall be applied for purposes of
 10 this clause by substituting ‘130 percent of current liability’
 11 for ‘the current liability’ in clause (i).”

12 (b) CONFORMING AMENDMENT.—Section 404(a)(1)
 13 of the Internal Revenue Code of 1986 is amended by strik-
 14 ing subparagraph (F).

15 (c) EFFECTIVE DATE.—The amendments made by
 16 this section shall apply to years beginning after December
 17 31, 2005.

18 **SEC. 212. BENEFIT LIMITATIONS FOR CERTAIN FINAN-**
 19 **CIALLY DISTRESSED PLANS.**

20 (a) INTERNAL REVENUE CODE OF 1986.—Section
 21 401(a) of the Internal Revenue Code of 1986 (relating to
 22 qualified pension, profit-sharing, and stock bonus plans),
 23 as amended by this Act, is amended by adding after para-
 24 graph (35) the following new paragraph:

1 “(36) BENEFIT LIMITATIONS FOR CERTAIN FI-
2 NANCIALLY DISTRESSED PLANS.—

3 “(A) IN GENERAL.—Notwithstanding any
4 other provision of this part, if a defined benefit
5 plan to which the requirements of section 412(l)
6 apply is a financially distressed plan for any
7 plan year, a trust forming part of the plan shall
8 not be treated as a qualified trust under this
9 section unless—

10 “(i) no amendment to the plan takes
11 effect during the plan year if such amend-
12 ment increases liabilities of the plan by
13 reason of increases in benefits, any change
14 in the accrual of benefits, or any change in
15 the rate at which benefits become non-
16 forfeitable,

17 “(ii) notwithstanding any other provi-
18 sion of the plan—

19 “(I) the accrued benefit, any
20 death or disability benefit, and any so-
21 cial security supplement described in
22 the last sentence of section 411(a)(9)
23 of each participant are frozen at the
24 amount of such benefit or supplement
25 as of the end of the preceding plan

1 year, determined without regard to
 2 any plan amendment adopted during
 3 the preceding plan year which in-
 4 creased any such benefit or supple-
 5 ment and determined after the appli-
 6 cation of this subclause, and

7 “(II) all other benefits provided
 8 under the plan are eliminated,

9 but only to the extent the freezing or elimi-
 10 nation of such benefits would have been
 11 permitted under section 411(d)(6) if they
 12 had been implemented by a plan amend-
 13 ment adopted at the end of the preceding
 14 plan year, and

15 “(iii) no payments described in para-
 16 graph (32)(B) are made to any participant
 17 or beneficiary whose annuity starting date
 18 occurs during the plan year.

19 Clause (iii) shall apply to any plan year begin-
 20 ning after such plan year and before the 1st
 21 plan year following such plan year for which the
 22 plan is not a financially distressed plan.

23 “(B) SPECIAL RULES IF FUNDING IN-
 24 CREASES TO AT LEAST 50 PERCENT.—If a plan
 25 is a financially distressed plan for any plan year

1 but the funded current liability percentage as of
 2 the beginning of the preceding plan year is at
 3 least 50 percent—

4 “(i) an amendment described in sub-
 5 paragraph (A)(i) may take effect but only
 6 if the funded current liability percentage
 7 as of the end of the plan year is projected
 8 (taking into the account the effect of the
 9 amendment) to be at least 50 percent, and

10 “(ii) the requirements of subpara-
 11 graph (A)(ii) shall not apply with respect
 12 to the plan year or any preceding plan
 13 year.

14 “(C) SPECIAL RULES.—For purposes of
 15 this paragraph—

16 “(i) IMPERMISSIBLE AMENDMENTS.—
 17 If a plan adopts an amendment in violation
 18 of subparagraph (A)(i) or (B)(i), the provi-
 19 sions of the plan shall be applied without
 20 regard to the amendment.

21 “(ii) COLLECTIVELY BARGAINED
 22 PLANS.—In the case of a plan maintained
 23 pursuant to a collective bargaining agree-
 24 ment between employee representatives
 25 and the employer and in effect before the

beginning of the first plan year of any continuous period of 1 or more plan years for which a plan is a financially distressed plan, this paragraph shall not be applied to benefits pursuant to, and individuals covered by, such agreement for plan years beginning before the date on which such collective bargaining agreement terminates (determined without regard to any extension thereof).

“(D) FINANCIALLY DISTRESSED PLAN.—

For purposes of this paragraph—

“(i) IN GENERAL.—A plan shall be treated as a financially distressed plan for any plan year if—

“(I) the plan sponsor during any 2 of the 5 plan years immediately preceding such plan year has an outstanding debt instrument which is rated speculative grade or lower by 1 or more nationally recognized statistical rating organizations for corporate bonds, and

“(II) the funded current liability percentage of the plan as of the begin-

1 ning of the plan year preceding such
2 plan year is less than 50 percent.

3 The Secretary shall prescribe rules for the
4 application of subclause (I) in cases where
5 outstanding debt instruments of the plan
6 sponsor are not rated.

7 “(ii) FINANCIAL STATUS MUST IM-
8 PROVE FOR AT LEAST 5 YEARS.—

9 “(I) IN GENERAL.—Notwith-
10 standing clause (i), if a plan is treated
11 under clause (i) as a financially dis-
12 tressed plan for 1 or more plan years,
13 the plan shall continue to be treated
14 as a financially distressed plan for
15 subsequent plan years beginning be-
16 fore the first plan year after the close
17 of the first period described in sub-
18 clause (II).

19 “(II) 5-YEAR PERIOD.—A period
20 described in this subparagraph is a 5-
21 consecutive-plan year period if during
22 each of the 5 plan years in the period
23 the plan sponsor did not have an out-
24 standing debt obligation described in
25 clause (i)(I) or during each of such 5

1 plan years the plan was not described
2 in clause (i)(II).

3 “(E) FUNDED CURRENT LIABILITY PER-
4 CENTAGE.—For purposes of this paragraph, the
5 term ‘funded current liability percentage’ has
6 the meaning given such term by section
7 412(l)(8)(B), except that the current liability
8 used in computing such percentage shall be de-
9 termined by only taking into account vested
10 benefits and by using the interest rate described
11 in section 4006(a)(3)(E)(iii)(II) of the Em-
12 ployee Retirement Income Security Act of 1974
13 and the fair market value of the plan assets.”

14 (b) EMPLOYEE RETIREMENT INCOME SECURITY ACT
15 OF 1974.—

16 (1) IN GENERAL.—Section 206 of the Employee
17 Retirement Income Security Act of 1974 (29 U.S.C.
18 1056) is amended by adding at the end the following
19 new subsection:

20 “(g) BENEFIT LIMITATIONS FOR CERTAIN FINAN-
21 CIALLY DISTRESSED PLANS.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of this part, if a defined benefit plan to
24 which the requirements of section 302(d) apply is a
25 financially distressed plan for any plan year—

1 “(A) no amendment to the plan shall take
2 effect during the plan year if such amendment
3 increases liabilities of the plan by reason of in-
4 creases in benefits, any change in the accrual of
5 benefits, or any change in the rate at which
6 benefits become nonforfeitable,

7 “(B) notwithstanding any other provision
8 of the plan—

9 “(i) the accrued benefit, any death or
10 disability benefit, and any social security
11 supplement described in the last sentence
12 of section 3(22) of each participant shall
13 be frozen at the amount of such benefit or
14 supplement as of the end of the preceding
15 plan year, determined without regard to
16 any plan amendment adopted during the
17 preceding plan year which increased any
18 such benefit or supplement and determined
19 after the application of this clause, and

20 “(ii) all other benefits provided under
21 the plan shall be eliminated,

22 but only to the extent the freezing or elimi-
23 nation of such benefits would have been per-
24 mitted under section 204(g) if they had been

1 implemented by a plan amendment adopted at
2 the end of the preceding plan year, and

3 “(C) the plan may not make any payments
4 described in section 206(e)(2) to any partici-
5 pant or beneficiary whose annuity starting date
6 occurs during the plan year.

7 Subparagraph (C) shall apply to any plan year be-
8 ginning after such plan year and before the 1st plan
9 year following such plan year for which the plan is
10 not a financially distressed plan.

11 “(2) SPECIAL RULES IF FUNDING INCREASES
12 TO AT LEAST 50 PERCENT.—If a plan is a financially
13 distressed plan for any plan year but the funded
14 current liability percentage as of the beginning of
15 the preceding plan year is at least 50 percent—

16 “(A) an amendment described in para-
17 graph (1)(A) may take effect but only if the
18 funded current liability percentage as of the end
19 of the plan year is projected (taking into the ac-
20 count the effect of the amendment) to be at
21 least 50 percent, and

22 “(B) the requirements of paragraph (1)(B)
23 shall not apply with respect to the plan year or
24 any preceding plan year.

1 “(3) SPECIAL RULES.—For purposes of this
2 subsection—

3 “(A) IMPERMISSIBLE AMENDMENTS.—If a
4 plan adopts an amendment in violation of para-
5 graph (1)(A) or (2)(A), the provisions of the
6 plan shall be applied without regard to the
7 amendment.

8 “(B) COLLECTIVELY BARGAINED PLANS.—
9 In the case of a plan maintained pursuant to a
10 collective bargaining agreement between em-
11 ployee representatives and the employer and in
12 effect before the beginning of the first plan year
13 of any continuous period of 1 or more plan
14 years for which a plan is a financially distressed
15 plan, this paragraph shall not be applied to
16 benefits pursuant to, and individuals covered
17 by, such agreement for plan years beginning be-
18 fore the date on which such collective bar-
19 gaining agreement terminates (determined with-
20 out regard to any extension thereof).

21 “(4) NOTICE REQUIREMENTS.—

22 “(A) IN GENERAL.—The plan adminis-
23 trator of a plan which is a financially distressed
24 plan for any year shall, at least 45 days before
25 the beginning of the plan year, notify each plan

participant or beneficiary, each labor organization representing such participants or beneficiaries, and the Pension Benefit Guaranty Corporation that—

“(i) the plan is treated as a financially distressed plan for purposes of this subsection and the reasons why it is so treated, and

“(ii) the restrictions applicable to the plan under this subsection for the plan year.

The Secretary of the Treasury may provide for the coordination of the notice under this subsection with the notice under section 204(h).

“(B) FORM AND MANNER.—Any notice under subparagraph (A)—

“(i) shall be provided in a form and manner prescribed by the Secretary of the Treasury,

“(ii) shall be written in a manner so as to be understood by the average plan participant, and

“(iii) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to

1 persons to whom the notice is required to
2 be provided.

3 “(5) FINANCIALLY DISTRESSED PLAN.—For
4 purposes of this subsection—

5 “(A) IN GENERAL.—A plan shall be treat-
6 ed as a financially distressed plan for any plan
7 year if—

8 “(i) the plan sponsor during any 2 of
9 the 5 plan years immediately preceding
10 such plan year has an outstanding debt in-
11 strument which is rated speculative grade
12 or lower by 1 or more nationally recognized
13 statistical rating organizations for cor-
14 porate bonds, and

15 “(ii) the funded current liability per-
16 centage of the plan as of the beginning of
17 the plan year preceding such plan year is
18 less than 50 percent.

19 The Secretary of the Treasury shall prescribe
20 rules for the application of clause (i) in cases
21 where outstanding debt instruments of the plan
22 sponsor are not rated.

23 “(B) FINANCIAL STATUS MUST IMPROVE
24 FOR AT LEAST 5 YEARS.—

1 “(i) IN GENERAL.—Notwithstanding
 2 subparagraph (A), if a plan is treated
 3 under subparagraph (A) as a financially
 4 distressed plan for 1 or more plan years,
 5 the plan shall continue to be treated as a
 6 financially distressed plan for subsequent
 7 plan years beginning before the first plan
 8 year after the close of the first period de-
 9 scribed in clause (ii).

10 “(ii) 5-YEAR PERIOD.—A period de-
 11 scribed in this clause is any 5-consecutive-
 12 plan year period if during each of the 5
 13 plan years in the period the plan sponsor
 14 did not have an outstanding debt instru-
 15 ment described in subparagraph (A)(i) or
 16 during each of such 5 plan years the plan
 17 was not described in subparagraph (A)(ii).

18 “(6) FUNDED CURRENT LIABILITY PERCENT-
 19 AGE.—For purposes of this subsection the term
 20 ‘funded current liability percentage’ has the meaning
 21 given such term by section 302(d)(8)(B), except that
 22 the current liability used in computing such percent-
 23 age shall be determined by only taking into account
 24 vested benefits and by using the interest rate de-

1 scribed in section 4006(a)(3)(E)(iii)(II) and the fair
 2 market value of the plan assets.”

3 (2) ENFORCEMENT.—Section 502(c)(3) of such
 4 Act (29 U.S.C. 1132(c)(3)) is amended by inserting
 5 “206(g)(4) or” before “302(d)(12)(E)”.

6 (c) EFFECTIVE DATES.—

7 (1) IN GENERAL.—The amendments made by
 8 this section shall apply to plan years beginning after
 9 December 31, 2006.

10 (2) RULES.—The Secretary of the Treasury
 11 shall, not later than December 31, 2005, publish
 12 such rules as are necessary to carry out the amend-
 13 ments made by this section.

14 (3) COLLECTIVE BARGAINING AGREEMENTS.—
 15 In the case of a plan maintained pursuant to 1 or
 16 more collective bargaining agreements between em-
 17 ployee representatives and 1 or more employers rati-
 18 fied by the date of the enactment of this Act, the
 19 amendments made by this section shall not apply to
 20 employees covered by any such agreement for plan
 21 years beginning before the later of—

22 (A) the date on which the last of such col-
 23 lective bargaining agreements terminates (de-
 24 termined without regard to any extension there-
 25 of on or after such date of enactment); or

(B) January 1, 2007.

SEC. 213. UPDATING DEDUCTION RULES FOR COMBINATION OF PLANS.

(a) IN GENERAL.—Subparagraph (C) of section 404(a)(7) of the Internal Revenue Code of 1986 (relating to limitation on deductions where combination of defined contribution plan and defined benefit plan) is amended by adding after clause (ii) the following new clause:

“(iii) LIMITATION.—In the case of employer contributions to 1 or more defined contribution plans, this paragraph shall only apply to the extent that such contributions exceed 6 percent of the compensation otherwise paid or accrued during the taxable year to the beneficiaries under such plans. For purposes of this clause, amounts carried over from preceding taxable years under subparagraph (B) shall be treated as employer contributions to 1 or more defined contributions to the extent attributable to employer contributions to such plans in such preceding taxable years.”

1 (b) CONFORMING AMENDMENT.—Subparagraph (A)
 2 of section 4972(c)(6) of such Code (relating to nondeduct-
 3 ible contributions) is amended to read as follows:

4 “(A) so much of the contributions to 1 or
 5 more defined contribution plans which are not
 6 deductible when contributed solely because of
 7 section 404(a)(7) as does not exceed the
 8 amount of contributions described in section
 9 401(m)(4)(A), or”.

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to contributions for taxable years
 12 beginning after December 31, 2004.

13 **Subtitle C—Provisions Relating to**
 14 **the Pension Benefit Guaranty**
 15 **Corporation**

16 **SEC. 221. PBGC PREMIUMS FOR NEW PLANS OF SMALL EM-**
 17 **LOYERS.**

18 (a) IN GENERAL.—Subparagraph (A) of section
 19 4006(a)(3) of the Employee Retirement Income Security
 20 Act of 1974 (29 U.S.C. 1306(a)(3)(A)) is amended—

21 (1) in clause (i), by inserting “other than a new
 22 single-employer plan (as defined in subparagraph
 23 (F)) maintained by a small employer (as so de-
 24 fined),” after “single-employer plan,”

1 (2) in clause (iii), by striking the period at the
2 end and inserting “, and”, and

3 (3) by adding at the end the following new
4 clause:

5 “(iv) in the case of a new single-employer plan
6 (as defined in subparagraph (F)) maintained by a
7 small employer (as so defined) for the plan year, \$5
8 for each individual who is a participant in such plan
9 during the plan year.”

10 (b) DEFINITION OF NEW SINGLE-EMPLOYER
11 PLAN.—Section 4006(a)(3) of the Employee Retirement
12 Income Security Act of 1974 (29 U.S.C. 1306(a)(3)) is
13 amended by adding at the end the following new subpara-
14 graph:

15 “(F)(i) For purposes of this paragraph, a single-em-
16 ployer plan maintained by a contributing sponsor shall be
17 treated as a new single-employer plan for each of its first
18 5 plan years if, during the 36-month period ending on the
19 date of the adoption of such plan, the sponsor or any
20 member of such sponsor’s controlled group (or any prede-
21 cessor of either) did not establish or maintain a plan to
22 which this title applies with respect to which benefits were
23 accrued for substantially the same employees as are in the
24 new single-employer plan.

1 “(ii)(I) For purposes of this paragraph, the term
 2 ‘small employer’ means an employer which on the first day
 3 of any plan year has, in aggregation with all members of
 4 the controlled group of such employer, 100 or fewer em-
 5 ployees.

6 “(II) In the case of a plan maintained by two or more
 7 contributing sponsors that are not part of the same con-
 8 trolled group, the employees of all contributing sponsors
 9 and controlled groups of such sponsors shall be aggregated
 10 for purposes of determining whether any contributing
 11 sponsor is a small employer.”

12 (c) EFFECTIVE DATE.—The amendments made by
 13 this section shall apply to plans first effective after Decem-
 14 ber 31, 2005.

15 **SEC. 222. ADDITIONAL PBGC PREMIUM FOR NEW AND**
 16 **SMALL PLANS.**

17 (a) NEW PLANS.—Subparagraph (E) of section
 18 4006(a)(3) of the Employee Retirement Income Security
 19 Act of 1974 (29 U.S.C. 1306(a)(3)(E)) is amended by
 20 adding at the end the following new clause:

21 “(v) In the case of a new defined benefit plan, the
 22 amount determined under clause (ii) for any plan year
 23 shall be an amount equal to the product of the amount
 24 determined under clause (ii) and the applicable percent-

1 age. For purposes of this clause, the term ‘applicable per-
2 centage’ means—

3 “(I) 0 percent, for the first plan year.

4 “(II) 20 percent, for the second plan year.

5 “(III) 40 percent, for the third plan year.

6 “(IV) 60 percent, for the fourth plan year.

7 “(V) 80 percent, for the fifth plan year.

8 For purposes of this clause, a defined benefit plan (as de-
9 fined in section 3(35)) maintained by a contributing spon-
10 sor shall be treated as a new defined benefit plan for each
11 of its first 5 plan years if, during the 36-month period
12 ending on the date of the adoption of the plan, the sponsor
13 and each member of any controlled group including the
14 sponsor (or any predecessor of either) did not establish
15 or maintain a plan to which this title applies with respect
16 to which benefits were accrued for substantially the same
17 employees as are in the new plan.”

18 (b) SMALL PLANS.—Paragraph (3) of section
19 4006(a) of the Employee Retirement Income Security Act
20 of 1974 (29 U.S.C. 1306(a)), as amended by section
21 221(b), is amended—

22 (1) by striking “The” in subparagraph (E)(i)
23 and inserting “Except as provided in subparagraph
24 (G), the”, and

1 (2) by inserting after subparagraph (F) the fol-
 2 lowing new subparagraph:

3 “(G)(i) In the case of an employer who has 25 or
 4 fewer employees on the first day of the plan year, the addi-
 5 tional premium determined under subparagraph (E) for
 6 each participant shall not exceed \$5 multiplied by the
 7 number of participants in the plan as of the close of the
 8 preceding plan year.

9 “(ii) For purposes of clause (i), whether an employer
 10 has 25 or fewer employees on the first day of the plan
 11 year is determined by taking into consideration all of the
 12 employees of all members of the contributing sponsor’s
 13 controlled group. In the case of a plan maintained by two
 14 or more contributing sponsors, the employees of all con-
 15 tributing sponsors and their controlled groups shall be ag-
 16 gregated for purposes of determining whether the 25-or-
 17 fewer-employees limitation has been satisfied.”

18 (c) EFFECTIVE DATES.—

19 (1) SUBSECTION (a).—The amendments made
 20 by subsection (a) shall apply to plans first effective
 21 after December 31, 2005.

22 (2) SUBSECTION (b).—The amendments made
 23 by subsection (b) shall apply to plan years beginning
 24 after December 31, 2005.

1 **SEC. 223. AUTHORIZATION FOR PBGC TO PAY INTEREST ON**
2 **PREMIUM OVERPAYMENT REFUNDS.**

3 (a) IN GENERAL.—Section 4007(b) of the Employ-
4 ment Retirement Income Security Act of 1974 (29 U.S.C.
5 1307(b)) is amended—

6 (1) by striking “(b)” and inserting “(b)(1)”,
7 and

8 (2) by inserting at the end the following new
9 paragraph:

10 “(2) The corporation is authorized to pay, subject to
11 regulations prescribed by the corporation, interest on the
12 amount of any overpayment of premium refunded to a des-
13 ignated payor. Interest under this paragraph shall be cal-
14 culated at the same rate and in the same manner as inter-
15 est is calculated for underpayments under paragraph (1).”

16 (b) EFFECTIVE DATE.—The amendments made by
17 subsection (a) shall apply to interest accruing for periods
18 beginning not earlier than the date of the enactment of
19 this Act.

20 **SEC. 224. SUBSTANTIAL OWNER BENEFITS IN TERMINATED**
21 **PLANS.**

22 (a) MODIFICATION OF PHASE-IN OF GUARANTEE.—
23 Section 4022(b)(5) of the Employee Retirement Income
24 Security Act of 1974 (29 U.S.C. 1322(b)(5)) is amended
25 to read as follows:

1 “(5)(A) For purposes of this paragraph, the term
2 ‘majority owner’ means an individual who, at any time
3 during the 60-month period ending on the date the deter-
4 mination is being made—

5 “(i) owns the entire interest in an unincor-
6 porated trade or business,

7 “(ii) in the case of a partnership, is a partner
8 who owns, directly or indirectly, 50 percent or more
9 of either the capital interest or the profits interest
10 in such partnership, or

11 “(iii) in the case of a corporation, owns, directly
12 or indirectly, 50 percent or more in value of either
13 the voting stock of that corporation or all the stock
14 of that corporation.

15 For purposes of clause (iii), the constructive ownership
16 rules of section 1563(e) of the Internal Revenue Code of
17 1986 shall apply (determined without regard to section
18 1563(e)(3)(C)).

19 “(B) In the case of a participant who is a majority
20 owner, the amount of benefits guaranteed under this sec-
21 tion shall equal the product of—

22 “(i) a fraction (not to exceed 1) the numerator
23 of which is the number of years from the later of the
24 effective date or the adoption date of the plan to the

1 termination date, and the denominator of which is
 2 10, and

3 “(ii) the amount of benefits that would be guar-
 4 anteed under this section if the participant were not
 5 a majority owner.”

6 (b) MODIFICATION OF ALLOCATION OF ASSETS.—

7 (1) Section 4044(a)(4)(B) of the Employee Re-
 8 tirement Income Security Act of 1974 (29 U.S.C.
 9 1344(a)(4)(B)) is amended by striking “section
 10 4022(b)(5)” and inserting “section 4022(b)(5)(B)”.

11 (2) Section 4044(b) of such Act (29 U.S.C.
 12 1344(b)) is amended—

13 (A) by striking “(5)” in paragraph (2) and
 14 inserting “(4), (5),” and

15 (B) by redesignating paragraphs (3)
 16 through (6) as paragraphs (4) through (7), re-
 17 spectively, and by inserting after paragraph (2)
 18 the following new paragraph:

19 “(3) If assets available for allocation under
 20 paragraph (4) of subsection (a) are insufficient to
 21 satisfy in full the benefits of all individuals who are
 22 described in that paragraph, the assets shall be allo-
 23 cated first to benefits described in subparagraph (A)
 24 of that paragraph. Any remaining assets shall then
 25 be allocated to benefits described in subparagraph

1 (B) of that paragraph. If assets allocated to such
 2 subparagraph (B) are insufficient to satisfy in full
 3 the benefits described in that subparagraph, the as-
 4 sets shall be allocated pro rata among individuals on
 5 the basis of the present value (as of the termination
 6 date) of their respective benefits described in that
 7 subparagraph.”

8 (c) CONFORMING AMENDMENTS.—

9 (1) Section 4021 of the Employee Retirement
 10 Income Security Act of 1974 (29 U.S.C. 1321) is
 11 amended—

12 (A) in subsection (b)(9), by striking “as
 13 defined in section 4022(b)(6)”, and

14 (B) by adding at the end the following new
 15 subsection:

16 “(d) For purposes of subsection (b)(9), the term ‘sub-
 17 stantial owner’ means an individual who, at any time dur-
 18 ing the 60-month period ending on the date the determina-
 19 tion is being made—

20 “(1) owns the entire interest in an unincor-
 21 porated trade or business,

22 “(2) in the case of a partnership, is a partner
 23 who owns, directly or indirectly, more than 10 per-
 24 cent of either the capital interest or the profits inter-
 25 est in such partnership, or

1 “(3) in the case of a corporation, owns, directly
 2 or indirectly, more than 10 percent in value of either
 3 the voting stock of that corporation or all the stock
 4 of that corporation.

5 For purposes of paragraph (3), the constructive ownership
 6 rules of section 1563(e) of the Internal Revenue Code of
 7 1986 shall apply (determined without regard to section
 8 1563(e)(3)(C)).”

9 (2) Section 4043(c)(7) of such Act (29 U.S.C.
 10 1343(c)(7)) is amended by striking “section
 11 4022(b)(6)” and inserting “section 4021(d)”.

12 (d) EFFECTIVE DATES.—

13 (1) IN GENERAL.—Except as provided in para-
 14 graph (2), the amendments made by this section
 15 shall apply to plan terminations—

16 (A) under section 4041(c) of the Employee
 17 Retirement Income Security Act of 1974 (29
 18 U.S.C. 1341(c)) with respect to which notices
 19 of intent to terminate are provided under sec-
 20 tion 4041(a)(2) of such Act (29 U.S.C.
 21 1341(a)(2)) after December 31, 2005, and

22 (B) under section 4042 of such Act (29
 23 U.S.C. 1342) with respect to which proceedings
 24 are instituted by the corporation after such
 25 date.

1 (2) CONFORMING AMENDMENTS.—The amend-
 2 ments made by subsection (c) shall take effect on
 3 January 1, 2006.

4 **SEC. 225. ACCELERATION OF COMPUTATION OF BENEFITS**
 5 **ATTRIBUTABLE TO RECOVERIES OF EM-**
 6 **PLOYER LIABILITY.**

7 (a) MODIFICATION OF AVERAGE RECOVERY PER-
 8 CENTAGE OF OUTSTANDING AMOUNT OF BENEFIT LI-
 9 ABILITIES PAYABLE BY CORPORATION TO PARTICIPANTS
 10 AND BENEFICIARIES.—Section 4022(c)(3)(B)(ii) of the
 11 Employee Retirement Income Security Act of 1974 (29
 12 U.S.C. 1322(c)(3)(B)(ii)) is amended to read as follows:

13 “(ii) notices of intent to terminate
 14 were provided (or in the case of a termi-
 15 nation by the corporation, a notice of de-
 16 termination under section 4042 was
 17 issued) during the 5-Federal fiscal year pe-
 18 riod ending with the third fiscal year pre-
 19 ceding the fiscal year in which occurs the
 20 date of the notice of intent to terminate
 21 (or the notice of determination under sec-
 22 tion 4042) with respect to the plan termi-
 23 nation for which the recovery ratio is being
 24 determined.”

1 (b) VALUATION OF SECTION 4062(c) LIABILITY FOR
 2 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
 3 PARTICIPANTS AND BENEFICIARIES.—Section 4044 of the
 4 Employee Retirement Income Security Act of 1974 (29
 5 U.S.C. 1362) is amended by adding at the end the fol-
 6 lowing new subsection:

7 “(e) VALUATION OF SECTION 4062(c) LIABILITY FOR
 8 DETERMINING AMOUNTS PAYABLE BY CORPORATION TO
 9 PARTICIPANTS AND BENEFICIARIES.—

10 “(1) IN GENERAL.—In the case of a terminated
 11 plan, the value of the recovery of liability under sec-
 12 tion 4062(c) allocable as a plan asset under this sec-
 13 tion for purposes of determining the amount of ben-
 14 efits payable by the corporation shall be determined
 15 by multiplying—

16 “(A) the amount of liability under section
 17 4062(c) as of the termination date of the plan,
 18 by

19 “(B) the applicable section 4062(c) recov-
 20 ery ratio.

21 “(2) SECTION 4062(c) RECOVERY RATIO.—For
 22 purposes of this subsection—

23 “(A) IN GENERAL.—Except as provided in
 24 subparagraph (C), the term ‘section 4062(c) re-
 25 covery ratio’ means the average, determined

1 with respect to prior plan terminations de-
 2 scribed in subparagraph (B), of the ratio
 3 which—

4 “(i) the value of the recovery under
 5 section 4062(c) determined by the corpora-
 6 tion in connection with any such prior ter-
 7 mination, bears to

8 “(ii) the amount of liability under sec-
 9 tion 4062(c) with respect to such plans as
 10 of the termination date in connection with
 11 any such prior termination.

12 “(B) PRIOR TERMINATIONS.—A plan ter-
 13 mination described in this subparagraph is a
 14 termination with respect to which—

15 “(i) the value of recoveries under sec-
 16 tion 4062(c) have been determined by the
 17 corporation, and

18 “(ii) notices of intent to terminate
 19 were provided (or in the case of a termi-
 20 nation by the corporation, a notice of de-
 21 termination under section 4042 was
 22 issued) during the 5-Federal fiscal year pe-
 23 riod ending with the third fiscal year pre-
 24 ceding the fiscal year in which occurs the
 25 date of the notice of intent to terminate

1 (or the notice of determination under sec-
 2 tion 4042) with respect to the plan termi-
 3 nation for which the recovery ratio is being
 4 determined.

5 “(C) EXCEPTION.—In the case of a termi-
 6 nated plan with respect to which the out-
 7 standing amount of benefit liabilities exceeds
 8 \$20,000,000, the term ‘section 4062(c) recovery
 9 ratio’ means, with respect to the termination of
 10 such plan, the ratio of—

11 “(i) the value of the recoveries on be-
 12 half of the plan under section 4062(c), to

13 “(ii) the amount of the liability owed
 14 under section 4062(c) as of the date of
 15 plan termination to the trustee appointed
 16 under section 4042 (b) or (c).

17 “(3) SUBSECTION NOT TO APPLY.—This sub-
 18 section shall not apply with respect to the deter-
 19 mination of—

20 “(A) whether the amount of outstanding
 21 benefit liabilities exceeds \$20,000,000, or

22 “(B) the amount of any liability under sec-
 23 tion 4062 to the corporation or the trustee ap-
 24 pointed under section 4042 (b) or (c).

1 “(4) DETERMINATIONS.—Determinations under
 2 this subsection shall be made by the corporation.
 3 Such determinations shall be binding unless shown
 4 by clear and convincing evidence to be unreason-
 5 able.”

6 (c) EFFECTIVE DATE.—The amendments made by
 7 this section shall apply for any termination for which no-
 8 tices of intent to terminate are provided (or in the case
 9 of a termination by the corporation, a notice of determina-
 10 tion under section 4042 is issued) on or after the date
 11 which is 30 days after the date of enactment of this sec-
 12 tion.

13 **Subtitle D—Studies**

14 **SEC. 231. JOINT STUDY ON REVITALIZING DEFINED BEN-** 15 **EFIT PLANS.**

16 (a) STUDY.—As soon as practicable after the date of
 17 the enactment of this Act, the Secretary of the Treasury,
 18 the Secretary of Labor, and the Executive Director of the
 19 Pension Benefit Guaranty Corporation shall jointly under-
 20 take a study on ways to revitalize interest in defined ben-
 21 efit plans among employers. In conducting such study, the
 22 Secretaries and the Executive Director shall consider—

23 (1) ways to encourage the establishment of de-
 24 fined benefit plans by small- and mid-sized employ-
 25 ers,

1 (2) ways to encourage the continued mainte-
2 nance of defined benefit plans by larger employers,
3 and

4 (3) legislative proposals to accomplish the objec-
5 tives described in paragraphs (1) and (2).

6 (b) REPORT.—Not later than 2 years after the date
7 of the enactment of this Act, the Secretaries and the Exec-
8 utive Director shall report the results of the study, to-
9 gether with any recommendations for legislative changes,
10 to the Committees on Ways and Means and Education and
11 the Workforce of the House of Representatives and the
12 Committees on Finance and Health, Education, Labor,
13 and Pensions of the Senate.

14 **SEC. 232. STUDY ON FLOOR-OFFSET ESOPS.**

15 (a) STUDY.—As soon as practicable after the date of
16 the enactment of this Act, the Secretary of the Treasury
17 and the Pension Benefit Guaranty Corporation shall un-
18 dertake a study to determine the number of floor-offset
19 employee stock ownership plans still in existence and the
20 extent to which such plans pose a risk to plan participants
21 or beneficiaries and to the Corporation. Such study shall
22 consider legislative proposals to address such risks.

23 (b) REPORT.—Not later than 1 year after the date
24 of the enactment of this Act, the Secretary and the Cor-
25 poration shall report the results of the study, together

1 with any recommendations for legislative changes, to the
 2 Committees on Ways and Means and Education and the
 3 Workforce of the House of Representatives and the Com-
 4 mittees on Finance and Health, Education, Labor, and
 5 Pensions of the Senate.

6 **TITLE III—IMPROVEMENTS IN** 7 **PORTABILITY AND DISTRIBUTION RULES** 8

9 **SEC. 301. CLARIFICATIONS REGARDING PURCHASE OF PER-** 10 **MISSIVE SERVICE CREDIT.**

11 (a) IN GENERAL.—Section 415(n) of the Internal
 12 Revenue Code of 1986 (relating to special rules for the
 13 purchase of permissive service credit) is amended—

14 (1) by striking “an employee” in paragraph (1)
 15 and inserting “a participant”, and

16 (2) by adding at the end of paragraph (3)(A)
 17 the following new flush sentence:

18 “Such term may include service credit for peri-
 19 ods for which there is no performance of serv-
 20 ice, and notwithstanding clause (ii), may in-
 21 clude service credited in order to provide an in-
 22 creased benefit for service credit which a partic-
 23 ipant is receiving under the plan.”

1 (b) SPECIAL RULES FOR TRUSTEE-TO-TRUSTEE
 2 TRANSFERS.—Section 415(n)(3) of such Code is amended
 3 by adding at the end the following new subparagraph:

4 “(D) SPECIAL RULES FOR TRUSTEE-TO-
 5 TRUSTEE TRANSFERS.—In the case of a trust-
 6 ee-to-trustee transfer to which section
 7 403(b)(13)(A) or 457(e)(17)(A) applies (with-
 8 out regard to whether the transfer is made be-
 9 tween plans maintained by the same em-
 10 ployer)—

11 “(i) the limitations of subparagraph
 12 (B) shall not apply in determining whether
 13 the transfer is for the purchase of permis-
 14 sive service credit, and

15 “(ii) the distribution rules applicable
 16 under this title to the defined benefit gov-
 17 ernmental plan to which any amounts are
 18 so transferred shall apply to such amounts
 19 and any benefits attributable to such
 20 amounts.”

21 (c) NONQUALIFIED SERVICE.—Section 415(n)(3) of
 22 such Code is amended—

23 (1) by striking “permissive service credit attrib-
 24 utable to nonqualified service” each place it appears

1 in subparagraph (B) and inserting “nonqualified
2 service credit”,

3 (2) by striking so much of subparagraph (C) as
4 precedes clause (i) and inserting:

5 “(C) NONQUALIFIED SERVICE CREDIT.—

6 For purposes of subparagraph (B), the term
7 ‘nonqualified service credit’ means permissive
8 service credit other than that allowed with re-
9 spect to—”, and

10 (3) by striking “elementary or secondary edu-
11 cation (through grade 12), as determined under
12 State law” and inserting “elementary or secondary
13 education (through grade 12), or a comparable level
14 of education, as determined under the applicable law
15 of the jurisdiction in which the service was per-
16 formed”.

17 (d) EFFECTIVE DATES.—

18 (1) IN GENERAL.—The amendments made by
19 subsections (a) and (c) shall take effect as if in-
20 cluded in the amendments made by section 1526 of
21 the Taxpayer Relief Act of 1997.

22 (2) SUBSECTION (b).—The amendments made
23 by subsection (b) shall take effect as if included in
24 the amendments made by section 647 of the Eco-

1 nomic Growth and Tax Relief Reconciliation Act of
2 2001.

3 **SEC. 302. ALLOW ROLLOVER OF AFTER-TAX AMOUNTS IN**
4 **ANNUITY CONTRACTS.**

5 (a) IN GENERAL.—Subparagraph (A) of section
6 402(c)(2) (maximum amount which may be rolled over)
7 is amended—

8 (1) by striking “which is part of a plan which
9 is a defined contribution plan and which agrees to
10 separately account” and inserting “or to an annuity
11 contract described in section 403(b) and such trust
12 or contract provides for separate accounting”; and

13 (2) by inserting “(and earnings thereon)” after
14 “so transferred”.

15 (b) EFFECTIVE DATE.—The amendment made by
16 subsection (a) shall apply to taxable years beginning after
17 December 31, 2005.

18 **SEC. 303. CLARIFICATION OF MINIMUM DISTRIBUTION**
19 **RULES.**

20 The Secretary of the Treasury shall issue regulations
21 under which a governmental plan (as defined in section
22 414(d) of the Internal Revenue Code of 1986) shall, for
23 all years to which section 401(a)(9) of such Code applies
24 to such plan, be treated as having complied with such sec-

tion 401(a)(9) if such plan complies with a reasonable
good faith interpretation of such section 401(a)(9).

**SEC. 304. WAIVER OF 10 PERCENT EARLY WITHDRAWAL
PENALTY TAX ON CERTAIN DISTRIBUTIONS
OF PENSION PLANS FOR PUBLIC SAFETY EM-
PLOYEES.**

(a) IN GENERAL.—Section 72(t) of the Internal Rev-
enue Code of 1986 (relating to subsection not to apply
to certain distributions) is amended by adding at the end
the following new paragraph:

“(10) DISTRIBUTIONS TO QUALIFIED PUBLIC
SAFETY EMPLOYEES IN GOVERNMENTAL PLANS.—

“(A) IN GENERAL.—In the case of a dis-
tribution to a qualified public safety employee
from a governmental plan (within the meaning
of section 414(d)) which is a defined benefit
plan, paragraph (2)(A)(v) shall be applied by
substituting ‘age 50’ for ‘age 55’.

“(B) QUALIFIED PUBLIC SAFETY EM-
PLOYEE.—For purposes of this paragraph, the
term ‘qualified public safety employee’ means
any employee of a State or political subdivision
of a State who provides police protection, fire-
fighting services, or emergency medical services

1 for any area within the jurisdiction of such
2 State or political subdivision.”

3 (b) **EFFECTIVE DATE.**—The amendment made by
4 this section shall apply to distributions after the date of
5 the enactment of this Act.

6 **SEC. 305. ALLOW ROLLOVERS BY NONSPOUSE BENE-**
7 **FICIARIES OF CERTAIN RETIREMENT PLAN**
8 **DISTRIBUTIONS.**

9 (a) **IN GENERAL.**—

10 (1) **QUALIFIED PLANS.**—Section 402(c) of the
11 Internal Revenue Code of 1986 (relating to rollovers
12 from exempt trusts) is amended by adding at the
13 end the following new paragraph:

14 “(11) **DISTRIBUTIONS TO INHERITED INDIV-**
15 **IDUAL RETIREMENT PLAN OF NONSPOUSE BENE-**
16 **FICIARY.**—

17 “(A) **IN GENERAL.**—If, with respect to any
18 portion of a distribution from an eligible retire-
19 ment plan of a deceased employee, a direct
20 trustee-to-trustee transfer is made to an indi-
21 vidual retirement plan described in clause (i) or
22 (ii) of paragraph (8)(B) established for the pur-
23 poses of receiving the distribution on behalf of
24 an individual who is a designated beneficiary
25 (as defined by section 401(a)(9)(E)) of the em-

1 ployee and who is not the surviving spouse of
2 the employee—

3 “(i) the transfer shall be treated as an
4 eligible rollover distribution for purposes of
5 this subsection,

6 “(ii) the individual retirement plan
7 shall be treated as an inherited individual
8 retirement account or individual retirement
9 annuity (within the meaning of section
10 408(d)(3)(C)) for purposes of this title,
11 and

12 “(iii) section 401(a)(9)(B) (other than
13 clause (iv) thereof) shall apply to such
14 plan.

15 “(B) CERTAIN TRUSTS TREATED AS BENE-
16 FICIARIES.—For purposes of this paragraph, to
17 the extent provided in rules prescribed by the
18 Secretary, a trust maintained for the benefit of
19 one or more designated beneficiaries shall be
20 treated in the same manner as a designated
21 beneficiary.”

22 (2) SECTION 403(a) PLANS.—Subparagraph (B)
23 of section 403(a)(4) of such Code (relating to roll-
24 over amounts) is amended by striking “and (9)” and
25 inserting “, (9), and (11)”.

1 (3) SECTION 403(b) PLANS.—Subparagraph (B)
 2 of section 403(b)(8) of such Code (relating to roll-
 3 over amounts) is amended by striking “and (9)” and
 4 inserting “, (9), and (11)”.

5 (4) SECTION 457 PLANS.—Subparagraph (B) of
 6 section 457(e)(16) of such Code (relating to rollover
 7 amounts) is amended by striking “and (9)” and in-
 8 serting “, (9), and (11)”.

9 (b) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to distributions after December 31,
 11 2005.

12 **SEC. 306. FASTER VESTING OF EMPLOYER NONELECTIVE**
 13 **CONTRIBUTIONS.**

14 (a) AMENDMENTS TO THE INTERNAL REVENUE
 15 CODE OF 1986.—

16 (1) IN GENERAL.—Paragraph (2) of section
 17 411(a) of the Internal Revenue Code of 1986 (relat-
 18 ing to employer contributions) is amended to read as
 19 follows:

20 “(2) EMPLOYER CONTRIBUTIONS.—

21 “(A) DEFINED BENEFIT PLANS.—

22 “(i) IN GENERAL.—In the case of a
 23 defined benefit plan, a plan satisfies the
 24 requirements of this paragraph if it satis-
 25 fies the requirements of clause (ii) or (iii).

“(ii) 5-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 5 years of service has a nonforfeitable right to 100 percent of the employee’s accrued benefit derived from employer contributions.

“(iii) 3 TO 7 YEAR VESTING.—A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

“(B) DEFINED CONTRIBUTION PLANS.—

“(i) IN GENERAL.—In the case of a defined contribution plan, a plan satisfies the requirements of this paragraph if it satisfies the requirements of clause (ii) or (iii).

“(ii) 3-YEAR VESTING.—A plan satisfies the requirements of this clause if an employee who has completed at least 3

1 years of service has a nonforfeitable right
 2 to 100 percent of the employee’s accrued
 3 benefit derived from employer contribu-
 4 tions.

5 “(iii) 2 TO 6 YEAR VESTING.—A plan
 6 satisfies the requirements of this clause if
 7 an employee has a nonforfeitable right to
 8 a percentage of the employee’s accrued
 9 benefit derived from employer contribu-
 10 tions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.”.

11 (2) CONFORMING AMENDMENT.—Section
 12 411(a) of such Code (relating to general rule for
 13 minimum vesting standards) is amended by striking
 14 paragraph (12).

15 (b) AMENDMENTS TO THE EMPLOYEE RETIREMENT
 16 INCOME SECURITY ACT OF 1974.—

17 (1) IN GENERAL.—Paragraph (2) of section
 18 203(a) of the Employee Retirement Income Security
 19 Act of 1974 (29 U.S.C. 1053(a)(2)) is amended to
 20 read as follows:

1 “(2)(A)(i) In the case of a defined benefit plan,
2 a plan satisfies the requirements of this paragraph
3 if it satisfies the requirements of clause (ii) or (iii).

4 “(ii) A plan satisfies the requirements of this
5 clause if an employee who has completed at least 5
6 years of service has a nonforfeitable right to 100
7 percent of the employee’s accrued benefit derived
8 from employer contributions.

9 “(iii) A plan satisfies the requirements of this
10 clause if an employee has a nonforfeitable right to
11 a percentage of the employee’s accrued benefit de-
12 rived from employer contributions determined under
13 the following table:

“Years of service:	The nonforfeitable percentage is:
3	20
4	40
5	60
6	80
7 or more	100.

14 “(B)(i) In the case of an individual account
15 plan, a plan satisfies the requirements of this para-
16 graph if it satisfies the requirements of clause (ii) or
17 (iii).

18 “(ii) A plan satisfies the requirements of this
19 clause if an employee who has completed at least 3
20 years of service has a nonforfeitable right to 100
21 percent of the employee’s accrued benefit derived
22 from employer contributions.

“(iii) A plan satisfies the requirements of this clause if an employee has a nonforfeitable right to a percentage of the employee’s accrued benefit derived from employer contributions determined under the following table:

“Years of service:	The nonforfeitable percentage is:
2	20
3	40
4	60
5	80
6 or more	100.”.

(2) CONFORMING AMENDMENT.—Section 203(a) of such Act is amended by striking paragraph (4).

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to contributions for plan years beginning after December 31, 2005.

(2) COLLECTIVE BARGAINING AGREEMENTS.—In the case of a plan maintained pursuant to one or more collective bargaining agreements between employee representatives and one or more employers ratified before the date of the enactment of this Act, the amendments made by this section shall not apply to contributions on behalf of employees covered by any such agreement for plan years beginning before the earlier of—

1 (A) the later of—

2 (i) the date on which the last of such
3 collective bargaining agreements termi-
4 nates (determined without regard to any
5 extension thereof on or after such date of
6 the enactment); or

7 (ii) January 1, 2006; or

8 (B) January 1, 2008.

9 (3) SERVICE REQUIRED.—With respect to any
10 plan, the amendments made by this section shall not
11 apply to any employee before the date that such em-
12 ployee has 1 hour of service under such plan in any
13 plan year to which the amendments made by this
14 section apply.

15 **SEC. 307. ALLOW DIRECT ROLLOVERS FROM RETIREMENT**
16 **PLANS TO ROTH IRAS.**

17 (a) IN GENERAL.—Subsection (e) of section 408A of
18 the Internal Revenue Code of 1986 (defining qualified roll-
19 over contribution) is amended to read as follows:

20 “(e) QUALIFIED ROLLOVER CONTRIBUTION.—For
21 purposes of this section, the term ‘qualified rollover con-
22 tribution’ means a rollover contribution—

23 “(1) to a Roth IRA from another such account,

24 “(2) from an eligible retirement plan, but only

25 if—

1 “(A) in the case of an individual retire-
 2 ment plan, such rollover contribution meets the
 3 requirements of section 408(d)(3), and

4 “(B) in the case of any eligible retirement
 5 plan (as defined in section 402(c)(8)(B) other
 6 than clauses (i) and (ii) thereof), such rollover
 7 contribution meets the requirements of section
 8 402(c), 403(b)(8), or 457(e)(16), as applicable.

9 For purposes of section 408(d)(3)(B), there shall be dis-
 10 regarded any qualified rollover contribution from an indi-
 11 vidual retirement plan (other than a Roth IRA) to a Roth
 12 IRA.”

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 408A(c)(3)(B) of such Code is
 15 amended—

16 (A) in the text by striking “individual re-
 17 tirement plan” and inserting “an eligible retire-
 18 ment plan (as defined by section
 19 402(c)(8)(B))”, and

20 (B) in the heading by striking “IRA” and
 21 inserting “ELIGIBLE RETIREMENT PLAN”.

22 (2) Section 408A(d)(3) of such Code is amend-
 23 ed—

1 (A) in subparagraph (A), by striking “sec-
 2 tion 408(d)(3)” inserting “sections 402(c),
 3 403(b)(8), 408(d)(3), and 457(e)(16)”,

4 (B) in subparagraph (B), by striking “in-
 5 dividual retirement plan” and inserting “eligible
 6 retirement plan (as defined by section
 7 402(c)(8)(B))”,

8 (C) in subparagraph (D), by inserting “or
 9 6047” after “408(i)”,

10 (D) in subparagraph (D), by striking “or
 11 both” and inserting “persons subject to section
 12 6047(d)(1), or all of the foregoing persons”,
 13 and

14 (E) in the heading, by striking “IRA” and
 15 inserting “ELIGIBLE RETIREMENT PLAN”.

16 (c) EFFECTIVE DATE.—The amendments made by
 17 this section shall apply to distributions after December 31,
 18 2005.

19 **SEC. 308. ELIMINATION OF HIGHER PENALTY ON CERTAIN**
 20 **SIMPLE PLAN DISTRIBUTIONS.**

21 (a) IN GENERAL.—Subsection (t) of section 72 of the
 22 Internal Revenue Code of 1986 (relating to 10-percent ad-
 23 ditional tax on early distributions from qualified retire-
 24 ment plans), as amended by section 304, is amended by
 25 striking paragraph (6) and redesignating paragraphs (7),

1 (8), (9), and (10) as paragraphs (6), (7), (8), and (9),
2 respectively.

3 (b) CONFORMING AMENDMENTS.—

4 (1) Section 72(t)(2)(E) of such Code is amend-
5 ed by striking “paragraph (7)” and inserting “para-
6 graph (6)”.

7 (2) Section 72(t)(2)(F) of such Code is amend-
8 ed by striking “paragraph (8)” and inserting “para-
9 graph (7)”.

10 (3) Section 408(d)(3)(G) of such Code is
11 amended by striking “applies” and inserting “ap-
12 plied on the day before the date of the enactment of
13 the National Employee Savings and Trust Equity
14 Guarantee Act of 2005)”.

15 (4) Section 457(a)(2) of such Code is amended
16 by striking “section 72(t)(9)” and inserting “section
17 72(t)(8)”.

18 (c) EFFECTIVE DATE.—The amendments made by
19 this section shall apply to years beginning after December
20 31, 2005.

21 **SEC. 309. SIMPLE PLAN PORTABILITY.**

22 (a) REPEAL OF LIMITATION.—Paragraph (3) of sec-
23 tion 408(d) of the Internal Revenue Code of 1986 (relat-
24 ing to rollover contributions), as amended by this Act, is
25 amended by striking subparagraph (G) and redesignating

1 subparagraphs (H) and (I) as subparagraphs (G) and (H),
 2 respectively.

3 (b) EFFECTIVE DATE.—The amendment made by
 4 this section shall apply to years beginning after December
 5 31, 2005.

6 **SEC. 310. ELIGIBILITY FOR PARTICIPATION IN RETIRE-**
 7 **MENT PLANS.**

8 An individual shall not be precluded from partici-
 9 pating in an eligible deferred compensation plan by reason
 10 of having received a distribution under section 457(e)(9)
 11 of the Internal Revenue Code of 1986, as in effect prior
 12 to the enactment of the Small Business Job Protection
 13 Act of 1996.

14 **SEC. 311. TRANSFERS TO THE PBGC.**

15 (a) MANDATORY DISTRIBUTIONS TO PBGC.—Clause
 16 (i) of section 401(a)(31)(B) of the Internal Revenue Code
 17 of 1986 (relating to general rule for certain mandatory
 18 distributions) is amended by inserting “to the Pension
 19 Benefit Guaranty Corporation in accordance with section
 20 4050(e) of the Employee Retirement Income Security Act
 21 of 1974 or” after “such transfer”.

22 (b) TAX TREATMENT OF DISTRIBUTIONS.—Subpara-
 23 graph (B) of section 401(a)(31) of such Code is amended
 24 by adding at the end the following new clause:

1 “(iii) INCOME TAX TREATMENT OF
 2 TRANSFERS TO PBGC.—For purposes of
 3 determining the income tax treatment re-
 4 lating to transfers to the Pension Benefit
 5 Guaranty Corporation under clause (i)—

6 “(I) the transfer of amounts to
 7 the Pension Benefit Guaranty Cor-
 8 poration pursuant to clause (i) shall
 9 be treated as a transfer to an indi-
 10 vidual retirement plan under such
 11 clause, and

12 “(II) the distribution of such
 13 amounts from the Pension Benefit
 14 Guaranty Corporation shall be treated
 15 as a distribution from an individual
 16 retirement plan.”

17 (c) MISSING PARTICIPANTS AND BENEFICIARIES.—
 18 Section 4050 of the Employee Retirement Income Security
 19 Act of 1974 (29 U.S.C. 1350), as amended by section 312,
 20 is amended by redesignating subsection (e) as subsection
 21 (f) and by inserting after subsection (d) the following new
 22 subsection:

23 “(e) INVOLUNTARY CASHOUTS.—

24 “(1) PAYMENT BY THE CORPORATION.—If ben-
 25 efits under a plan described in paragraph (3) were

1 transferred to the corporation under section
2 401(a)(31)(B) of the Internal Revenue Code of
3 1986, the corporation shall, upon application filed by
4 the participant or beneficiary with the corporation in
5 such form and manner as may be prescribed in regu-
6 lations of the corporation, pay to the participant or
7 beneficiary the amount transferred (or the appro-
8 priate survivor benefit) either—

9 “(A) in a single sum (plus interest), or

10 “(B) in such other form as is specified in
11 regulations of the corporation.

12 “(2) INFORMATION TO THE CORPORATION.—To
13 the extent provided in regulations, the plan adminis-
14 trator of a plan described in paragraph (3) shall,
15 upon a transfer of benefits to the corporation under
16 section 401(a)(31)(B) of such Code, provide the cor-
17 poration information with respect to benefits of the
18 participant or beneficiary so transferred.

19 “(3) PLANS DESCRIBED.—A plan is described
20 in this paragraph if the plan is a pension plan (with-
21 in the meaning of section 3(2))—

22 “(A) which provides for mandatory dis-
23 tributions under section 401(a)(31)(B) of the
24 Internal Revenue Code of 1986, and

1 “(B) which is not a plan described in para-
2 graphs (2) through (11) of section 4021(b).

3 “(4) CERTAIN PROVISIONS NOT TO APPLY.—
4 Subsections (a)(1) and (a)(3) shall not apply to a
5 plan described in paragraph (3).”

6 (d) EFFECTIVE DATES.—

7 (1) INTERNAL REVENUE CODE PROVISIONS.—
8 The amendments made by subsections (a) and (b)
9 shall take effect as if included in the amendments
10 made by section 657 of the Economic Growth and
11 Tax Relief Reconciliation Act of 2001.

12 (2) EMPLOYEE RETIREMENT INCOME SECURITY
13 ACT OF 1974 PROVISIONS.—The amendments made
14 by subsection (c) shall apply to distributions made
15 after final regulations implementing subsection (e)
16 of section 4050 of the Employee Retirement Income
17 Security Act of 1974 (as added by subsection (c))
18 are prescribed.

19 (3) REGULATIONS.—The Pension Benefit Guar-
20 anty Corporation shall issue regulations necessary to
21 carry out the amendments made by subsection (c)
22 not later than December 31, 2006.

23 **SEC. 312. MISSING PARTICIPANTS.**

24 (a) IN GENERAL.—Section 4050 of the Employee Re-
25 tirement Income Security Act of 1974 (29 U.S.C. 1350)

1 is amended by redesignating subsection (c) as subsection
 2 (e) and by inserting after subsection (b) the following new
 3 subsections:

4 “(c) MULTIEMPLOYER PLANS.—The corporation
 5 shall prescribe rules similar to the rules in subsection (a)
 6 for multiemployer plans covered by this title that termi-
 7 nate under section 4041A.

8 “(d) PLANS NOT OTHERWISE SUBJECT TO TITLE.—

9 “(1) TRANSFER TO CORPORATION.—The plan
 10 administrator of a plan described in paragraph (4)
 11 may elect to transfer a missing participant’s benefits
 12 to the corporation upon termination of the plan.

13 “(2) INFORMATION TO THE CORPORATION.—To
 14 the extent provided in regulations, the plan adminis-
 15 trator of a plan described in paragraph (4) shall,
 16 upon termination of the plan, provide the corpora-
 17 tion information with respect to benefits of a miss-
 18 ing participant if the plan transfers such benefits—

19 “(A) to the corporation, or

20 “(B) to an entity other than the corpora-
 21 tion or a plan described in paragraph (4)(B)(ii).

22 “(3) PAYMENT BY THE CORPORATION.—If ben-
 23 efits of a missing participant were transferred to the
 24 corporation under paragraph (1), the corporation
 25 shall, upon location of the participant or beneficiary,

1 pay to the participant or beneficiary the amount
2 transferred (or the appropriate survivor benefit) ei-
3 ther—

4 “(A) in a single sum (plus interest), or

5 “(B) in such other form as is specified in
6 regulations of the corporation.

7 “(4) PLANS DESCRIBED.—A plan is described
8 in this paragraph if—

9 “(A) the plan is a pension plan (within the
10 meaning of section 3(2))—

11 “(i) to which the provisions of this
12 section do not apply (without regard to
13 this subsection), and

14 “(ii) which is not a plan described in
15 paragraphs (2) through (11) of section
16 4021(b), and

17 “(B) at the time the assets are to be dis-
18 tributed upon termination, the plan—

19 “(i) has missing participants, and

20 “(ii) has not provided for the transfer
21 of assets to pay the benefits of all missing
22 participants to another pension plan (with-
23 in the meaning of section 3(2)).

1 “(5) CERTAIN PROVISIONS NOT TO APPLY.—
 2 Subsections (a)(1) and (a)(3) shall not apply to a
 3 plan described in paragraph (4).”

4 (b) CONFORMING AMENDMENTS.—Section 206(f) of
 5 such Act (29 U.S.C. 1056(f)) is amended—

6 (1) by striking “title IV” and inserting “section
 7 4050”; and

8 (2) by striking “the plan shall provide that,”.

9 (c) EFFECTIVE DATE.—The amendments made by
 10 this section shall apply to distributions made after final
 11 regulations implementing subsections (c) and (d) of sec-
 12 tion 4050 of the Employee Retirement Income Security
 13 Act of 1974 (as added by subsection (a)), respectively, are
 14 prescribed.

15 **TITLE IV—ADMINISTRATIVE** 16 **PROVISIONS**

17 **SEC. 401. EMPLOYEE PLANS COMPLIANCE RESOLUTION** 18 **SYSTEM.**

19 (a) IN GENERAL.—The Secretary of the Treasury
 20 shall have full authority to establish and implement the
 21 Employee Plans Compliance Resolution System (or any
 22 successor program) and any other employee plans correc-
 23 tion policies, including the authority to waive income, ex-
 24 cise, or other taxes to ensure that any tax, penalty, or

1 sanction is not excessive and bears a reasonable relation-
2 ship to the nature, extent, and severity of the failure.

3 (b) IMPROVEMENTS.—The Secretary of the Treasury
4 shall continue to update and improve the Employee Plans
5 Compliance Resolution System (or any successor pro-
6 gram), giving special attention to—

7 (1) increasing the awareness and knowledge of
8 small employers concerning the availability and use
9 of the program;

10 (2) taking into account special concerns and
11 circumstances that small employers face with respect
12 to compliance and correction of compliance failures;

13 (3) extending the duration of the self-correction
14 period under the Self-Correction Program for signifi-
15 cant compliance failures;

16 (4) expanding the availability to correct insig-
17 nificant compliance failures under the Self-Correc-
18 tion Program during audit; and

19 (5) assuring that any tax, penalty, or sanction
20 that is imposed by reason of a compliance failure is
21 not excessive and bears a reasonable relationship to
22 the nature, extent, and severity of the failure.

1 **SEC. 402. EXTENSION TO ALL GOVERNMENTAL PLANS OF**
2 **MORATORIUM ON APPLICATION OF CERTAIN**
3 **NONDISCRIMINATION RULES APPLICABLE TO**
4 **STATE AND LOCAL PLANS.**

5 (a) IN GENERAL.—The following provisions are each
6 amended by striking “maintained by a State or local gov-
7 ernment or political subdivision thereof (or agency or in-
8 strumentality thereof)”:

9 (1) Section 401(a)(5)(G) of the Internal Rev-
10 enue Code of 1986.

11 (2) Section 401(a)(26)(H) of such Code.

12 (3) Section 401(k)(3)(G) of such Code.

13 (4) Section 1505(d)(2) of the Taxpayer Relief
14 Act of 1997.

15 (b) CONFORMING AMENDMENTS.—

16 (1) The heading for section 401(a)(5)(G) of
17 such Code is amended to read as follows: “GOVERN-
18 MENTAL PLANS.—”.

19 (2) The heading for section 401(a)(26)(H) of
20 such Code is amended to read as follows: “EXCEP-
21 TION FOR GOVERNMENTAL PLANS.—”.

22 (3) Section 401(k)(3)(G) of such Code is
23 amended by inserting “GOVERNMENTAL PLANS.—”
24 after “(G)”.

1 (c) EFFECTIVE DATE.—The amendments made by
 2 this section shall apply to plan years beginning after De-
 3 cember 31, 2005.

4 **SEC. 403. NOTICE AND CONSENT PERIOD REGARDING DIS-**
 5 **TRIBUTIONS.**

6 (a) EXPANSION OF PERIOD.—

7 (1) AMENDMENT OF INTERNAL REVENUE
 8 CODE.—

9 (A) IN GENERAL.—Section 417(a)(6)(A) of
 10 the Internal Revenue Code of 1986 is amended
 11 by striking “90-day” and inserting “180-day”.

12 (B) MODIFICATION OF REGULATIONS.—
 13 The Secretary of the Treasury shall modify the
 14 regulations under sections 402(f), 411(a)(11),
 15 and 417 of the Internal Revenue Code of 1986
 16 by substituting “180 days” for “90 days” each
 17 place it appears in Treasury Regulations sec-
 18 tions 1.402(f)–1, 1.411(a)–11(c), and 1.417(e)–
 19 1(b).

20 (2) AMENDMENT OF ERISA.—

21 (A) IN GENERAL.—Section 205(c)(7)(A) of
 22 the Employee Retirement Income Security Act
 23 of 1974 (29 U.S.C. 1055(c)(7)(A)) is amended
 24 by striking “90-day” and inserting “180-day”.

1 (B) MODIFICATION OF REGULATIONS.—

2 The Secretary of the Treasury shall modify the
3 regulations under part 2 of subtitle B of title
4 I of the Employee Retirement Income Security
5 Act of 1974 relating to sections 203(e) and 205
6 of such Act by substituting “180 days” for “90
7 days” each place it appears.

8 (3) EFFECTIVE DATE.—The amendments and
9 modifications made or required by this subsection
10 shall apply to years beginning after December 31,
11 2005.

12 (b) NOTIFICATION OF RIGHT TO DEFER.—

13 (1) IN GENERAL.—The Secretary of the Treas-
14 ury shall modify the regulations under section
15 411(a)(11) of the Internal Revenue Code of 1986
16 and under section 205 of the Employee Retirement
17 Income Security Act of 1974 to provide that the de-
18 scription of a participant’s right, if any, to defer re-
19 ceipt of a distribution shall also describe the con-
20 sequences of failing to defer such receipt.

21 (2) EFFECTIVE DATE.—

22 (A) IN GENERAL.—The modifications re-
23 quired by paragraph (1) shall apply to years be-
24 ginning after December 31, 2005.

1 (B) REASONABLE NOTICE.—A plan shall
 2 not be treated as failing to meet the require-
 3 ments of section 411(a)(11) of such Code or
 4 section 205 of such Act with respect to any de-
 5 scription of consequences described in para-
 6 graph (1) made within 90 days after the Sec-
 7 retary of the Treasury issues the modifications
 8 required by paragraph (1) if the plan adminis-
 9 trator makes a reasonable attempt to comply
 10 with such requirements.

11 **SEC. 404. REPORTING SIMPLIFICATION.**

12 (a) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
 13 OWNERS AND THEIR SPOUSES.—

14 (1) IN GENERAL.—The Secretary of the Treas-
 15 ury and the Secretary of Labor shall modify the re-
 16 quirements for filing annual returns with respect to
 17 one-participant retirement plans to ensure that such
 18 plans with assets of \$250,000 or less as of the close
 19 of the plan year need not file a return for that year.

20 (2) ONE-PARTICIPANT RETIREMENT PLAN DE-
 21 FINED.—For purposes of this subsection, the term
 22 “one-participant retirement plan” means a retire-
 23 ment plan with respect to which the following re-
 24 quirements are met:

25 (A) on the first day of the plan year—

1 (i) the plan covered only one indi-
2 vidual (or the individual and the individ-
3 ual's spouse) and the individual owned 100
4 percent of the plan sponsor (whether or
5 not incorporated), or

6 (ii) the plan covered only one or more
7 partners (or partners and their spouses) in
8 the plan sponsor;

9 (B) the plan meets the minimum coverage
10 requirements of section 410(b) of the Internal
11 Revenue Code of 1986 without being combined
12 with any other plan of the business that covers
13 the employees of the business;

14 (C) the plan does not provide benefits to
15 anyone except the individual (and the individ-
16 ual's spouse) or the partners (and their
17 spouses);

18 (D) the plan does not cover a business that
19 is a member of an affiliated service group, a
20 controlled group of corporations, or a group of
21 businesses under common control; and

22 (E) the plan does not cover a business that
23 uses the services of leased employees (within
24 the meaning of section 414(n) of such Code).

1 For purposes of this paragraph, the term “partner”
 2 includes a 2-percent shareholder (as defined in sec-
 3 tion 1372(b) of such Code) of an S corporation.

4 (3) OTHER DEFINITIONS.—Terms used in para-
 5 graph (2) which are also used in section 414 of the
 6 Internal Revenue Code of 1986 shall have the re-
 7 spective meanings given such terms by such section.

8 (4) EFFECTIVE DATE.—The provisions of this
 9 subsection shall apply to plan years beginning on or
 10 after January 1, 2006.

11 (b) SIMPLIFIED ANNUAL FILING REQUIREMENT FOR
 12 PLANS WITH FEWER THAN 25 EMPLOYEES.—In the case
 13 of plan years beginning after December 31, 2006, the Sec-
 14 retary of the Treasury and the Secretary of Labor shall
 15 provide for the filing of a simplified annual return for any
 16 retirement plan which covers less than 25 employees on
 17 the first day of a plan year and which meets the require-
 18 ments described in subparagraphs (B), (D), and (E) of
 19 subsection (a)(2).

20 **SEC. 405. VOLUNTARY EARLY RETIREMENT INCENTIVE AND**
 21 **EMPLOYMENT RETENTION PLANS MAIN-**
 22 **TAINED BY LOCAL EDUCATIONAL AGENCIES**
 23 **AND OTHER ENTITIES.**

24 (a) VOLUNTARY EARLY RETIREMENT INCENTIVE
 25 PLANS.—

1 (1) TREATMENT AS PLAN PROVIDING SEVER-
 2 ANCE PAY.—Section 457(e)(11) of the Internal Rev-
 3 enue Code of 1986 (relating to certain plans ex-
 4 cluded) is amended by adding at the end the fol-
 5 lowing new subparagraph:

6 “(D) CERTAIN VOLUNTARY EARLY RETIRE-
 7 MENT INCENTIVE PLANS.—

8 “(i) IN GENERAL.—If an applicable
 9 voluntary early retirement incentive plan—

10 “(I) makes payments or supple-
 11 ments as an early retirement benefit,
 12 a retirement-type subsidy, or a benefit
 13 described in the last sentence of sec-
 14 tion 411(a)(9), and

15 “(II) such payments or supple-
 16 ments are made in coordination with
 17 a defined benefit plan which is de-
 18 scribed in section 401(a) and includes
 19 a trust exempt from tax under section
 20 501(a) and which is maintained by an
 21 eligible employer described in para-
 22 graph (1)(A) or by an education asso-
 23 ciation described in clause (ii)(II),

24 such applicable plan shall be treated for
 25 purposes of subparagraph (A)(i) as a bona

1 fide severance pay plan with respect to
 2 such payments or supplements to the ex-
 3 tent such payments or supplements could
 4 otherwise have been provided under such
 5 defined benefit plan (determined as if sec-
 6 tion 411 applied to such defined benefit
 7 plan).

8 “(ii) APPLICABLE VOLUNTARY EARLY
 9 RETIREMENT INCENTIVE PLAN.—For pur-
 10 poses of this subparagraph, the term ‘ap-
 11 plicable voluntary early retirement incen-
 12 tive plan’ means a voluntary early retire-
 13 ment incentive plan maintained by—

14 “(I) a local educational agency
 15 (as defined in section 9101 of the Ele-
 16 mentary and Secondary Education
 17 Act of 1965 (20 U.S.C. 7801)), or

18 “(II) an education association
 19 which principally represents employees
 20 of 1 or more agencies described in
 21 subclause (I) and which is described
 22 in section 501(c) (5) or (6) and ex-
 23 empt from tax under section 501(a).”

24 (2) AGE DISCRIMINATION IN EMPLOYMENT
 25 ACT.—Section 4(l)(1) of the Age Discrimination in

1 Employment Act of 1967 (29 U.S.C. 623(l)(1)) is
2 amended—

3 (A) by inserting “(A)” after “(1)”,

4 (B) by redesignating subparagraphs (A)
5 and (B) as clauses (i) and (ii), respectively,

6 (C) by redesignating clauses (i) and (ii) of
7 subparagraph (B) (as in effect before the
8 amendments made by subparagraph (B)) as
9 subclauses (I) and (II), respectively, and

10 (D) by adding at the end the following:

11 “(B) A voluntary early retirement incentive
12 plan that—

13 “(i) is maintained by—

14 “(I) a local educational agency (as de-
15 fined in section 9101 of the Elementary
16 and Secondary Education Act of 1965 (20
17 U.S.C. 7801), or

18 “(II) an education association which
19 principally represents employees of 1 or
20 more agencies described in subclause (I)
21 and which is described in section 501(c)
22 (5) or (6) of the Internal Revenue Code of
23 1986 and exempt from taxation under sec-
24 tion 501(a) of such Code, and

1 “(ii) makes payments or supplements de-
 2 scribed in subclauses (I) and (II) of subpara-
 3 graph (A)(ii) in coordination with a defined
 4 benefit plan (as so defined) maintained by an
 5 eligible employer described in section
 6 457(e)(1)(A) of such Code or by an education
 7 association described in clause (i)(II),
 8 shall be treated solely for purposes of subparagraph
 9 (A)(ii) as if it were a part of the defined benefit plan
 10 with respect to such payments or supplements. Pay-
 11 ments or supplements under such a voluntary early
 12 retirement incentive plan shall not constitute sever-
 13 ance pay for purposes of section 4(l)(2) of the Age
 14 Discrimination in Employment Act (29 U.S.C.
 15 623(l)(2)).”

16 (b) EMPLOYMENT RETENTION PLANS.—

17 (1) IN GENERAL.—Section 457(f)(2) of the In-
 18 ternal Revenue Code of 1986 (relating to exceptions)
 19 is amended by striking “and” at the end of subpara-
 20 graph (D), by striking the period at the end of sub-
 21 paragraph (E) and inserting “, and”, and by adding
 22 at the end the following:

23 “(F) that portion of any applicable employ-
 24 ment retention plan described in paragraph (4)
 25 with respect to any participant.”

1 (2) DEFINITIONS AND RULES RELATING TO EM-
 2 PLOYMENT RETENTION PLANS.—Section 457(f) of
 3 such Code is amended by adding at the end the fol-
 4 lowing new paragraph:

5 “(4) EMPLOYMENT RETENTION PLANS.—For
 6 purposes of paragraph (2)(F)—

7 “(A) IN GENERAL.—The portion of an ap-
 8 plicable employment retention plan described in
 9 this paragraph with respect to any participant
 10 is that portion of the plan which provides bene-
 11 fits payable to the participant not in excess of
 12 twice the applicable dollar limit determined
 13 under subsection (e)(15).

14 “(B) OTHER RULES.—

15 “(i) LIMITATION.—Paragraph (2)(F)
 16 shall only apply to the portion of the plan
 17 described in subparagraph (A) for years
 18 preceding the year in which such portion is
 19 paid or otherwise made available to the
 20 participant.

21 “(ii) TREATMENT.—A plan shall not
 22 be treated for purposes of this title as pro-
 23 viding for the deferral of compensation for
 24 any year with respect to the portion of the
 25 plan described in subparagraph (A).

1 “(C) APPLICABLE EMPLOYMENT RETEN-
2 TION PLAN.—The term ‘applicable employment
3 retention plan’ means an employment retention
4 plan maintained by—

5 “(i) a local educational agency (as de-
6 fined in section 9101 of the Elementary
7 and Secondary Education Act of 1965 (20
8 U.S.C. 7801), or

9 “(ii) an education association which
10 principally represents employees of 1 or
11 more agencies described in clause (i) and
12 which is described in section 501(c) (5) or
13 (6) and exempt from taxation under sec-
14 tion 501(a).

15 “(D) EMPLOYMENT RETENTION PLAN.—
16 The term ‘employment retention plan’ means a
17 plan to pay, upon termination of employment,
18 compensation to an employee of a local edu-
19 cational agency or education association de-
20 scribed in subparagraph (C) for purposes of—

21 “(i) retaining the services of the em-
22 ployee, or

23 “(ii) rewarding such employee for the
24 employee’s service with 1 or more such
25 agencies or associations.”

1 (c) COORDINATION WITH ERISA.—Section 3(2)(B)
 2 of the Employee Retirement Income Security Act of 1974
 3 (29 U.S.C. 1002(2)(B)) is amended by adding at the end
 4 the following: “An applicable voluntary early retirement
 5 incentive plan (as defined in section 457(e)(11)(D)(ii) of
 6 the Internal Revenue Code of 1986) making payments or
 7 supplements described in section 457(e)(11)(D)(i) of such
 8 Code, and an applicable employment retention plan (as de-
 9 fined in section 457(f)(4)(C) of such Code) making pay-
 10 ments of benefits described in section 457(f)(4)(A) of such
 11 Code, shall, for purposes of this title, be treated as a wel-
 12 fare plan (and not a pension plan) with respect to such
 13 payments and supplements.”

14 (d) EFFECTIVE DATES.—

15 (1) IN GENERAL.—The amendments made by
 16 this Act shall take effect on the date of the enact-
 17 ment of this Act.

18 (2) TAX AMENDMENTS.—The amendments
 19 made by subsections (a)(1) and (b) shall apply to
 20 taxable years ending after the date of the enactment
 21 of this Act.

22 (3) ERISA AMENDMENTS.—The amendment
 23 made by subsection (c) shall apply to plan years
 24 ending after the date of the enactment of this Act.

1 (4) CONSTRUCTION.—Nothing in the amend-
 2 ments made by this section shall alter or affect the
 3 construction of the Internal Revenue Code of 1986,
 4 the Employee Retirement Income Security Act of
 5 1974, or the Age Discrimination in Employment Act
 6 of 1967 as applied to any plan, arrangement, or con-
 7 duct to which such amendments do not apply.

8 **SEC. 406. NO REDUCTION IN UNEMPLOYMENT COMPENSA-**
 9 **TION AS A RESULT OF PENSION ROLLOVERS.**

10 (a) IN GENERAL.—Section 3304(a) of the Internal
 11 Revenue Code of 1986 (relating to requirements for State
 12 unemployment laws) is amended by adding at the end the
 13 following new flush sentence:

14 “Compensation shall not be reduced under paragraph (15)
 15 for any pension, retirement or retired pay, annuity, or
 16 similar payment which is not includible in gross income
 17 of the individual for the taxable year in which paid because
 18 it was part of a rollover distribution.”

19 (b) EFFECTIVE DATE.—The amendment made by
 20 this section shall apply to weeks beginning on or after the
 21 date of the enactment of this Act.

22 **SEC. 407. WITHHOLDING ON DISTRIBUTIONS FROM GOV-**
 23 **ERNMENTAL SECTION 457 PLANS.**

24 (a) IN GENERAL.—Section 641(f) of the Economic
 25 Growth and Tax Relief Reconciliation Act of 2001 is

1 amended by adding at the end the following new para-
 2 graph:

3 “(4) **TRANSITION RULE FOR CERTAIN GOVERN-**
 4 **MENTAL PLANS.**—In the case of distributions from
 5 an eligible deferred compensation plan of an em-
 6 ployer described in section 457(e)(1)(A) of the Inter-
 7 nal Revenue Code of 1986 which are made after De-
 8 cember 31, 2001, and which are part of a series of
 9 distributions which—

10 “(A) began before January 1, 2002, and

11 “(B) are payable for 10 years or less, the
 12 Internal Revenue Code of 1986 may be applied
 13 to such distributions without regard to the
 14 amendments made by subsection (a)(1)(D).”

15 (b) **EFFECTIVE DATE.**—The amendment made by
 16 subsection (a) shall take effect as if included in the provi-
 17 sions of section 641 of the Economic Growth and Tax Re-
 18 lief Reconciliation Act of 2001.

19 **SEC. 408. PROVISIONS RELATING TO PLAN AMENDMENTS.**

20 (a) **IN GENERAL.**—If this section applies to any plan
 21 or contract amendment—

22 (1) such plan or contract shall be treated as
 23 being operated in accordance with the terms of the
 24 plan during the period described in subsection

25 (b)(2)(A), and

(2) except as provided by the Secretary of the Treasury, such plan shall not fail to meet the requirements of section 411(d)(6) of the Internal Revenue Code of 1986 and section 204(g) of the Employee Retirement Income Security Act of 1974 by reason of such amendment.

(b) AMENDMENTS TO WHICH SECTION APPLIES.—

(1) IN GENERAL.—This section shall apply to any amendment to any plan or annuity contract which is made—

(A) pursuant to any amendment made by this Act or the Economic Growth and Tax Relief Reconciliation Act of 2001, or pursuant to any regulation issued by the Secretary of the Treasury or the Secretary of Labor under such Acts, and

(B) on or before the last day of the first plan year beginning on or after January 1, 2007, or such later date as the Secretary of the Treasury may prescribe.

In the case of a governmental plan (as defined in section 414(d) of the Internal Revenue Code of 1986), subparagraph (B) shall be applied by substituting the date which is 2 years after the date otherwise applied under subparagraph (B).

1 (2) CONDITIONS.—This section shall not apply
2 to any amendment unless—

3 (A) during the period—

4 (i) beginning on the date the legisla-
5 tive or regulatory amendment described in
6 paragraph (1)(A) takes effect (or in the
7 case of a plan or contract amendment not
8 required by such legislative or regulatory
9 amendment, the effective date specified by
10 the plan), and

11 (ii) ending on the date described in
12 paragraph (1)(B) (or, if earlier, the date
13 the plan or contract amendment is adopt-
14 ed),

15 the plan or contract is operated as if such plan
16 or contract amendment were in effect; and

17 (B) such plan or contract amendment ap-
18 plies retroactively for such period.

1 **TITLE V—PROVISIONS RELAT-**
2 **ING TO SPOUSAL PENSION**
3 **PROTECTION**

4 **Subtitle A—Study of Spousal Con-**
5 **sent for Distributions From De-**
6 **defined Contribution Plans**

7 **SEC. 501. JOINT STUDY OF APPLICATION OF SPOUSAL CON-**
8 **SENT RULES TO DEFINED CONTRIBUTION**
9 **PLANS.**

10 (a) STUDY.—The Secretary of Labor and the Sec-
11 retary of the Treasury shall jointly conduct a study of the
12 feasibility and desirability of extending the application of
13 the requirements of section 205 of the Employee Retire-
14 ment Income Security Act of 1974 and sections
15 401(a)(11) and 417 of the Internal Revenue Code of 1986
16 (relating to spousal consent requirements) to defined con-
17 tribution plans to which such requirements do not apply.
18 Such study shall include consideration of—

19 (1) any modifications of such requirements that
20 are necessary to apply such requirements to such
21 plans, and

22 (2) the feasibility of providing notice and spous-
23 al consent in 1 or more electronic forms that are ca-
24 pable of authentication.

1 (b) REPORT.—Not later than 2 years after the date
 2 of the enactment of this Act, the Secretaries shall report
 3 the results of the study, together with any recommenda-
 4 tions for legislative changes, to the Committees on Ways
 5 and Means and Education and the Workforce of the
 6 House of Representatives and the Committees on Finance
 7 and Health, Education, Labor, and Pensions of the Sen-
 8 ate.

9 **Subtitle B—Division Of Pension**
 10 **Benefits Upon Divorce**

11 **SEC. 511. REGULATIONS ON TIME AND ORDER OF**
 12 **ISSUANCE OF DOMESTIC RELATIONS OR-**
 13 **DERS.**

14 Not later than 1 year after the date of the enactment
 15 of this Act, the Secretary of Labor shall issue regulations
 16 under section 206(d)(3) of the Employee Retirement Secu-
 17 rity Act of 1974 and section 414(p) of the Internal Rev-
 18 enue Code of 1986 which clarify that—

19 (1) a domestic relations order otherwise meet-
 20 ing the requirements to be a qualified domestic rela-
 21 tions order, including the requirements of section
 22 206(d)(3)(D) of such Act and section 414(p)(3) of
 23 such Code, shall not fail to be treated as a qualified
 24 domestic relations order solely because—

1 (A) the order is issued after, or revises, an-
 2 other domestic relations order or qualified do-
 3 mestic relations order; or

4 (B) of the time at which it is issued; and

5 (2) any order described in paragraph (1) shall
 6 be subject to the same requirements and protections
 7 which apply to qualified domestic relations orders,
 8 including the provisions of section 206(d)(3)(H) of
 9 such Act and section 414(p)(7) of such Code.

10 **Subtitle C—Railroad Retirement**

11 **SEC. 521. ENTITLEMENT OF DIVORCED SPOUSES TO RAIL-** 12 **ROAD RETIREMENT ANNUITIES INDE-** 13 **PENDENT OF ACTUAL ENTITLEMENT OF EM-** 14 **PLOYEE.**

15 (a) IN GENERAL.—Section 2 of the Railroad Retire-
 16 ment Act of 1974 (45 U.S.C. 231a) is amended—

17 (1) in subsection (c)(4)(i), by striking “(A) is
 18 entitled to an annuity under subsection (a)(1) and
 19 (B)”;

20 (2) in subsection (e)(5), by striking “or di-
 21 vorced wife” the second place it appears.

22 (b) EFFECTIVE DATE.—The amendments made by
 23 this section shall take effect 1 year after the date of the
 24 enactment of this Act.

1 **SEC. 522. EXTENSION OF TIER II RAILROAD RETIREMENT**
 2 **BENEFITS TO SURVIVING FORMER SPOUSES**
 3 **PURSUANT TO DIVORCE AGREEMENTS.**

4 (a) IN GENERAL.—Section 5 of the Railroad Retire-
 5 ment Act of 1974 (45 U.S.C. 231d) is amended by adding
 6 at the end the following:

7 “(d) Notwithstanding any other provision of law, the
 8 payment of any portion of an annuity computed under sec-
 9 tion 3(b) to a surviving former spouse in accordance with
 10 a court decree of divorce, annulment, or legal separation
 11 or the terms of any court-approved property settlement
 12 incident to any such court decree shall not be terminated
 13 upon the death of the individual who performed the service
 14 with respect to which such annuity is so computed unless
 15 such termination is otherwise required by the terms of
 16 such court decree.”

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall take effect 1 year after the date of the
 19 enactment of this Act.

20 **Subtitle D—Modifications of Joint**
 21 **and Survivor Annuity Require-**
 22 **ments**

23 **SEC. 531. REQUIREMENT FOR ADDITIONAL SURVIVOR AN-**
 24 **NUITY OPTION.**

25 (a) AMENDMENTS TO INTERNAL REVENUE CODE.—

1 (1) ELECTION OF SURVIVOR ANNUITY.—Section
 2 417(a)(1)(A) of the Internal Revenue Code of 1986
 3 is amended—

4 (A) in clause (i), by striking “, and” and
 5 inserting a comma;

6 (B) by redesignating clause (ii) as clause
 7 (iii); and

8 (C) by inserting after clause (i) the fol-
 9 lowing:

10 “(ii) if the participant elects a waiver
 11 under clause (i), may elect the qualified op-
 12 tional survivor annuity at any time during the
 13 applicable election period, and”.

14 (2) DEFINITION.—Section 417 of such Code is
 15 amended by adding at the end the following:

16 “(g) DEFINITION OF QUALIFIED OPTIONAL SUR-
 17 VIVOR ANNUITY.—

18 “(1) IN GENERAL.—For purposes of this sec-
 19 tion, the term ‘qualified optional survivor annuity’
 20 means an annuity—

21 “(A) for the life of the participant with a
 22 survivor annuity for the life of the spouse which
 23 is equal to the applicable percentage of the
 24 amount of the annuity which is payable during

1 the joint lives of the participant and the spouse,
 2 and

3 “(B) which is the actuarial equivalent of a
 4 single annuity for the life of the participant.

5 Such term also includes any annuity in a form hav-
 6 ing the effect of an annuity described in the pre-
 7 ceding sentence.

8 “(2) APPLICABLE PERCENTAGE.—

9 “(A) IN GENERAL.—For purposes of para-
 10 graph (1), if the survivor annuity percentage—

11 “(i) is less than 75 percent, the appli-
 12 cable percentage is 75 percent, and

13 “(ii) is greater than or equal to 75
 14 percent, the applicable percentage is 50
 15 percent.

16 “(B) SURVIVOR ANNUITY PERCENTAGE.—

17 For purposes of subparagraph (A), the term
 18 ‘survivor annuity percentage’ means the per-
 19 centage which the survivor annuity under the
 20 plan’s qualified joint and survivor annuity bears
 21 to the annuity payable during the joint lives of
 22 the participant and the spouse.”

23 (3) NOTICE.—Section 417(a)(3)(A)(i) of such
 24 Code is amended by inserting “and of the qualified
 25 optional survivor annuity” after “annuity”.

1 (b) AMENDMENTS TO ERISA.—

2 (1) ELECTION OF SURVIVOR ANNUITY.—Section
3 205(c)(1)(A) of the Employee Retirement Income
4 Security Act of 1974 (29 U.S.C. 1055(c)(1)(A)) is
5 amended—

6 (A) in clause (i), by striking “, and” and
7 inserting a comma;

8 (B) by redesignating clause (ii) as clause
9 (iii); and

10 (C) by inserting after clause (i) the fol-
11 lowing:

12 “(ii) if the participant elects a waiver
13 under clause (i), may elect the qualified op-
14 tional survivor annuity at any time during the
15 applicable election period, and”.

16 (2) DEFINITION.—Section 205(d) of such Act
17 (29 U.S.C. 1055(d)) is amended—

18 (A) by inserting “(1)” after “(d)”;

19 (B) by redesignating paragraphs (1) and
20 (2) as subparagraphs (A) and (B), respectively;
21 and

22 (C) by adding at the end the following:

23 “(2)(A) For purposes of this section, the term ‘quali-
24 fied optional survivor annuity’ means an annuity—

1 “(i) for the life of the participant with a sur-
 2 vivor annuity for the life of the spouse which is
 3 equal to the applicable percentage of the amount of
 4 the annuity which is payable during the joint lives
 5 of the participant and the spouse, and

6 “(ii) which is the actuarial equivalent of a sin-
 7 gle annuity for the life of the participant.

8 Such term also includes any annuity in a form having the
 9 effect of an annuity described in the preceding sentence.

10 “(B)(i) For purposes of subparagraph (A), if the sur-
 11 vivor annuity percentage—

12 “(I) is less than 75 percent, the applicable per-
 13 centage is 75 percent, and

14 “(II) is greater than or equal to 75 percent, the
 15 applicable percentage is 50 percent.

16 “(ii) For purposes of clause (i), the term ‘survivor
 17 annuity percentage’ means the percentage which the sur-
 18 vivor annuity under the plan’s qualified joint and survivor
 19 annuity bears to the annuity payable during the joint lives
 20 of the participant and the spouse.”

21 (3) NOTICE.—Section 205(c)(3)(A)(i) of such
 22 Act (29 U.S.C. 1055(c)(3)(A)(i)) is amended by in-
 23 serting “and of the qualified optional survivor annu-
 24 ity” after “annuity”.

25 (c) EFFECTIVE DATES.—

1 (1) IN GENERAL.—The amendments made by
 2 this section shall apply to plan years beginning after
 3 December 31, 2005.

4 (2) SPECIAL RULE FOR COLLECTIVELY BAR-
 5 GAINED PLANS.—In the case of a plan maintained
 6 pursuant to 1 or more collective bargaining agree-
 7 ments between employee representatives and 1 or
 8 more employers ratified on or before the date of the
 9 enactment of this Act, the amendments made by this
 10 section shall apply to the first plan year beginning
 11 on or after the earlier of—

12 (A) the later of—

13 (i) January 1, 2006, or

14 (ii) the date on which the last of such
 15 collective bargaining agreements termi-
 16 nates (determined without regard to any
 17 extension thereof after the date of enact-
 18 ment of this Act), or

19 (B) January 1, 2007.

20 **TITLE VI—TAX COURT PENSION** 21 **AND COMPENSATION**

22 **SEC. 600. AMENDMENT OF 1986 CODE.**

23 Except as otherwise expressly provided, whenever in
 24 this title an amendment or repeal is expressed in terms
 25 of an amendment to, or repeal of, a section or other provi-

1 sion, the reference shall be considered to be made to a
 2 section or other provision of the Internal Revenue Code
 3 of 1986.

4 **SEC. 601. ANNUITIES FOR SURVIVORS OF TAX COURT**
 5 **JUDGES WHO ARE ASSASSINATED.**

6 (a) ELIGIBILITY IN CASE OF DEATH BY ASSASSINA-
 7 TION.—Subsection (h) of section 7448 (relating to annu-
 8 ities to surviving spouses and dependent children of
 9 judges) is amended to read as follows:

10 “(h) ENTITLEMENT TO ANNUITY.—

11 “(1) IN GENERAL.—

12 “(A) ANNUITY TO SURVIVING SPOUSE.—If
 13 a judge described in paragraph (2) is survived
 14 by a surviving spouse but not by a dependent
 15 child, there shall be paid to such surviving
 16 spouse an annuity beginning with the day of the
 17 death of the judge or following the surviving
 18 spouse’s attainment of the age of 50 years,
 19 whichever is the later, in an amount computed
 20 as provided in subsection (m).

21 “(B) ANNUITY TO CHILD.—If such a judge
 22 is survived by a surviving spouse and a depend-
 23 ent child or children, there shall be paid to such
 24 surviving spouse an immediate annuity in an
 25 amount computed as provided in subsection

(m), and there shall also be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

“(i) 10 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

“(ii) 20 percent of such average annual salary, divided by the number of such children.

“(C) ANNUITY TO SURVIVING DEPENDENT CHILDREN.—If such a judge leaves no surviving spouse but leaves a surviving dependent child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the lesser of—

“(i) 20 percent of the average annual salary of such judge (determined in accordance with subsection (m)), or

“(ii) 40 percent of such average annual salary, divided by the number of such children.

“(2) COVERED JUDGES.—Paragraph (1) applies to any judge electing under subsection (b)—

“(A) who dies while a judge after having rendered at least 5 years of civilian service com-

1 puted as prescribed in subsection (n), for the
2 last 5 years of which the salary deductions pro-
3 vided for by subsection (c)(1) or the deposits
4 required by subsection (d) have actually been
5 made or the salary deductions required by the
6 civil service retirement laws have actually been
7 made, or

8 “(B) who dies by assassination after hav-
9 ing rendered less than 5 years of civilian service
10 computed as prescribed in subsection (n) if, for
11 the period of such service, the salary deductions
12 provided for by subsection (c)(1) or the deposits
13 required by subsection (d) have actually been
14 made.

15 “(3) TERMINATION OF ANNUITY.—

16 “(A) IN THE CASE OF A SURVIVING
17 SPOUSE.—The annuity payable to a surviving
18 spouse under this subsection shall be terminable
19 upon such surviving spouse’s death or such sur-
20 viving spouse’s remarriage before attaining age
21 55.

22 “(B) IN THE CASE OF A CHILD.—The an-
23 nuity payable to a child under this subsection
24 shall be terminable upon (i) the child attaining
25 the age of 18 years, (ii) the child’s marriage, or

(iii) the child's death, whichever first occurs, except that if such child is incapable of self-support by reason of mental or physical disability the child's annuity shall be terminable only upon death, marriage, or recovery from such disability.

“(C) IN THE CASE OF A DEPENDENT CHILD AFTER DEATH OF SURVIVING SPOUSE.—

In case of the death of a surviving spouse of a judge leaving a dependent child or children of the judge surviving such spouse, the annuity of such child or children shall be recomputed and paid as provided in paragraph (1)(C).

“(D) RECOMPUTATION.—In any case in which the annuity of a dependent child is terminated under this subsection, the annuities of any remaining dependent child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was so terminated had not survived such judge.

“(4) SPECIAL RULE FOR ASSASSINATED JUDGES.—In the case of a survivor or survivors of a judge described in paragraph (2)(B), there shall be

1 deducted from the annuities otherwise payable under
2 this section an amount equal to—

3 “(A) the amount of salary deductions pro-
4 vided for by subsection (c)(1) that would have
5 been made if such deductions had been made
6 for 5 years of civilian service computed as pre-
7 scribed in subsection (n) before the judge’s
8 death, reduced by

9 “(B) the amount of such salary deductions
10 that were actually made before the date of the
11 judge’s death.”

12 (b) DEFINITION OF ASSASSINATION.—Section
13 7448(a) (relating to definitions) is amended by adding at
14 the end the following new paragraph:

15 “(8) The terms ‘assassinated’ and ‘assassina-
16 tion’ mean the killing of a judge that is motivated
17 by the performance by that judge of his or her offi-
18 cial duties.”

19 (c) DETERMINATION OF ASSASSINATION.—Sub-
20 section (i) of section 7448 is amended—

21 (1) by striking the subsection heading and in-
22 serting the following:

23 “(i) DETERMINATIONS BY CHIEF JUDGE.—

24 “(1) DEPENDENCY AND DISABILITY.—”,

25 (2) by moving the text 2 ems to the right, and

1 (3) by adding at the end the following new
2 paragraph:

3 “(2) ASSASSINATION.—The chief judge shall
4 determine whether the killing of a judge was an as-
5 sassinaton, subject to review only by the Tax Court.
6 The head of any Federal agency that investigates
7 the killing of a judge shall provide information to
8 the chief judge that would assist the chief judge in
9 making such a determination.”

10 (d) COMPUTATION OF ANNUITIES.—Subsection (m)
11 of section 7448 is amended—

12 (1) by striking the subsection heading and in-
13 serting the following:

14 “(m) COMPUTATION OF ANNUITIES.—

15 “(1) IN GENERAL.—”,

16 (2) by moving the text 2 ems to the right, and

17 (3) by adding at the end the following new
18 paragraph:

19 “(2) ASSASSINATED JUDGES.—In the case of a
20 judge who is assassinated and who has served less
21 than 3 years, the annuity of the surviving spouse of
22 such judge shall be based upon the average annual
23 salary received by such judge for judicial service.”

24 (e) OTHER BENEFITS.—Section 7448 is amended by
25 adding at the end the following:

1 “(u) OTHER BENEFITS.—In the case of a judge who
 2 is assassinated, an annuity shall be paid under this section
 3 notwithstanding a survivor’s eligibility for or receipt of
 4 benefits under chapter 81 of title 5, United States Code,
 5 except that the annuity for which a surviving spouse is
 6 eligible under this section shall be reduced to the extent
 7 that the total benefits paid under this section and chapter
 8 81 of that title for any year would exceed the current sal-
 9 ary for that year of the office of the judge.”

10 **SEC. 602. COST-OF-LIVING ADJUSTMENTS FOR TAX COURT**
 11 **JUDICIAL SURVIVOR ANNUITIES.**

12 (a) IN GENERAL.—Subsection (s) of section 7448
 13 (relating to annuities to surviving spouses and dependent
 14 children of judges) is amended to read as follows:

15 “(s) INCREASES IN SURVIVOR ANNUITIES.—Each
 16 time that an increase is made under section 8340(b) of
 17 title 5, United States Code, in annuities payable under
 18 subchapter III of chapter 83 of that title, each annuity
 19 payable from the survivors annuity fund under this section
 20 shall be increased at the same time by the same percent-
 21 age by which annuities are increased under such section
 22 8340(b).”

23 (b) EFFECTIVE DATE.—The amendment made by
 24 this section shall apply with respect to increases made
 25 under section 8340(b) of title 5, United States Code, in

1 annuities payable under subchapter III of chapter 83 of
2 that title, taking effect after the date of the enactment
3 of this Act.

4 **SEC. 603. LIFE INSURANCE COVERAGE FOR TAX COURT**
5 **JUDGES.**

6 (a) IN GENERAL.—Section 7447 (relating to retire-
7 ment of judges) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(j) LIFE INSURANCE COVERAGE.—For purposes of
10 chapter 87 of title 5, United States Code (relating to life
11 insurance), any individual who is serving as a judge of
12 the Tax Court or who is retired under this section is
13 deemed to be an employee who is continuing in active em-
14 ployment.”

15 (b) EFFECTIVE DATE.—The amendment made by
16 this section shall apply to any individual serving as a judge
17 of the United States Tax Court or to any retired judge
18 of the United States Tax Court on the date of the enact-
19 ment of this Act.

20 **SEC. 604. COST OF LIFE INSURANCE COVERAGE FOR TAX**
21 **COURT JUDGES AGE 65 OR OVER.**

22 Section 7472 (relating to expenditures) is amended
23 by inserting after the first sentence the following new sen-
24 tence: “Notwithstanding any other provision of law, the
25 Tax Court is authorized to pay on behalf of its judges,

1 age 65 or over, any increase in the cost of Federal Em-
 2 ployees' Group Life Insurance imposed after April 24,
 3 1999, including any expenses generated by such payments,
 4 as authorized by the chief judge in a manner consistent
 5 with such payments authorized by the Judicial Conference
 6 of the United States pursuant to section 604(a)(5) of title
 7 28, United States Code."

8 **SEC. 605. MODIFICATION OF TIMING OF LUMP-SUM PAY-**
 9 **MENT OF JUDGES' ACCRUED ANNUAL LEAVE.**

10 (a) IN GENERAL.—Section 7443 (relating to mem-
 11 bership of the Tax Court) is amended by adding at the
 12 end the following new subsection:

13 “(h) LUMP-SUM PAYMENT OF JUDGES' ACCRUED
 14 ANNUAL LEAVE.—Notwithstanding the provisions of sec-
 15 tions 5551 and 6301 of title 5, United States Code, when
 16 an individual subject to the leave system provided in chap-
 17 ter 63 of that title is appointed by the President to be
 18 a judge of the Tax Court, the individual shall be entitled
 19 to receive, upon appointment to the Tax Court, a lump-
 20 sum payment from the Tax Court of the accumulated and
 21 accrued current annual leave standing to the individual's
 22 credit as certified by the agency from which the individual
 23 resigned.”

24 (b) EFFECTIVE DATE.—The amendment made by
 25 this section shall apply to any judge of the United States

1 Tax Court who has an outstanding leave balance on the
 2 date of the enactment of this Act and to any individual
 3 appointed by the President to serve as a judge of the
 4 United States Tax Court after such date.

5 **SEC. 606. PARTICIPATION OF TAX COURT JUDGES IN THE**
 6 **THRIFT SAVINGS PLAN.**

7 (a) IN GENERAL.—Section 7447 (relating to retire-
 8 ment of judges), as amended by this Act, is amended by
 9 adding at the end the following new subsection:

10 “(k) THRIFT SAVINGS PLAN.—

11 “(1) ELECTION TO CONTRIBUTE.—

12 “(A) IN GENERAL.—A judge of the Tax
 13 Court may elect to contribute to the Thrift Sav-
 14 ings Fund established by section 8437 of title
 15 5, United States Code.

16 “(B) PERIOD OF ELECTION.—An election
 17 may be made under this paragraph only during
 18 a period provided under section 8432(b) of title
 19 5, United States Code, for individuals subject to
 20 chapter 84 of such title.

21 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—

22 Except as otherwise provided in this subsection, the
 23 provisions of subchapters III and VII of chapter 84
 24 of title 5, United States Code, shall apply with re-

1 spect to a judge who makes an election under para-
2 graph (1).

3 “(3) SPECIAL RULES.—

4 “(A) AMOUNT CONTRIBUTED.—The
5 amount contributed by a judge to the Thrift
6 Savings Fund in any pay period shall not ex-
7 ceed the maximum percentage of such judge’s
8 basic pay for such period as allowable under
9 section 8440f of title 5, United States Code.
10 Basic pay does not include any retired pay paid
11 pursuant to this section.

12 “(B) CONTRIBUTIONS FOR BENEFIT OF
13 JUDGE.—No contributions may be made for the
14 benefit of a judge under section 8432(c) of title
15 5, United States Code.

16 “(C) APPLICABILITY OF SECTION 8433(b)
17 OF TITLE 5 WHETHER OR NOT JUDGE RE-
18 TIRES.—Section 8433(b) of title 5, United
19 States Code, applies with respect to a judge
20 who makes an election under paragraph (1) and
21 who either—

22 “(i) retires under subsection (b), or

23 “(ii) ceases to serve as a judge of the
24 Tax Court but does not retire under sub-
25 section (b).

1 Retirement under subsection (b) is a separation
 2 from service for purposes of subchapters III
 3 and VII of chapter 84 of that title.

4 “(D) APPLICABILITY OF SECTION
 5 8351(b)(5) OF TITLE 5.—The provisions of sec-
 6 tion 8351(b)(5) of title 5, United States Code,
 7 shall apply with respect to a judge who makes
 8 an election under paragraph (1).

9 “(E) EXCEPTION.—Notwithstanding sub-
 10 paragraph (C), if any judge retires under this
 11 section, or resigns without having met the age
 12 and service requirements set forth under sub-
 13 section (b)(2), and such judge’s nonforfeitable
 14 account balance is less than an amount that the
 15 Executive Director of the Office of Personnel
 16 Management prescribes by regulation, the Exec-
 17 utive Director shall pay the nonforfeitable ac-
 18 count balance to the participant in a single pay-
 19 ment.”

20 (b) EFFECTIVE DATE.—The amendment made by
 21 this section shall take effect on the date of the enactment
 22 of this Act, except that United States Tax Court judges
 23 may only begin to participate in the Thrift Savings Plan
 24 at the next open season beginning after such date.

1 **SEC. 607. EXEMPTION OF TEACHING COMPENSATION OF**
 2 **RETIRED JUDGES FROM LIMITATION ON**
 3 **OUTSIDE EARNED INCOME.**

4 (a) IN GENERAL.—Section 7447 (relating to retire-
 5 ment of judges), as amended by this Act, is amended by
 6 adding at the end the following new subsection:

7 “(1) TEACHING COMPENSATION OF RETIRED
 8 JUDGES.—For purposes of the limitation under section
 9 501(a) of the Ethics in Government Act of 1978 (5 U.S.C.
 10 App.), any compensation for teaching approved under sec-
 11 tion 502(a)(5) of such Act shall not be treated as outside
 12 earned income when received by a judge of the Tax Court
 13 who has retired under subsection (b) for teaching per-
 14 formed during any calendar year for which such a judge
 15 has met the requirements of subsection (c), as certified
 16 by the chief judge of the Tax Court.”

17 (b) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to any individual serving as a re-
 19 tired judge of the United States Tax Court on or after
 20 the date of the enactment of this Act.

21 **SEC. 608. GENERAL PROVISIONS RELATING TO MAG-**
 22 **ISTRATE JUDGES OF THE TAX COURT.**

23 (a) TITLE OF SPECIAL TRIAL JUDGE CHANGED TO
 24 MAGISTRATE JUDGE OF THE TAX COURT.—The heading
 25 of section 7443A is amended to read as follows:

1 **“SEC. 7443A. MAGISTRATE JUDGES OF THE TAX COURT.”**

2 (b) APPOINTMENT, TENURE, AND REMOVAL.—Sub-
3 section (a) of section 7443A is amended to read as follows:

4 “(a) APPOINTMENT, TENURE, AND REMOVAL.—

5 “(1) APPOINTMENT.—The chief judge may,
6 from time to time, appoint and reappoint magistrate
7 judges of the Tax Court for a term of 8 years. The
8 magistrate judges of the Tax Court shall proceed
9 under such rules as may be promulgated by the Tax
10 Court.

11 “(2) REMOVAL.—Removal of a magistrate
12 judge of the Tax Court during the term for which
13 he or she is appointed shall be only for incom-
14 petency, misconduct, neglect of duty, or physical or
15 mental disability, but the office of a magistrate
16 judge of the Tax Court shall be terminated if the
17 judges of the Tax Court determine that the services
18 performed by the magistrate judge of the Tax Court
19 are no longer needed. Removal shall not occur unless
20 a majority of all the judges of the Tax Court concur
21 in the order of removal. Before any order of removal
22 shall be entered, a full specification of the charges
23 shall be furnished to the magistrate judge of the Tax
24 Court, and he or she shall be accorded by the judges
25 of the Tax Court an opportunity to be heard on the
26 charges.”

1 (c) SALARY.—Section 7443A(d) (relating to salary)
 2 is amended by striking “90” and inserting “92”.

3 (d) EXEMPTION FROM FEDERAL LEAVE PROVI-
 4 SIONS.—Section 7443A is amended by adding at the end
 5 the following new subsection:

6 “(f) EXEMPTION FROM FEDERAL LEAVE PROVI-
 7 SIONS.—

8 “(1) IN GENERAL.—A magistrate judge of the
 9 Tax Court appointed under this section shall be ex-
 10 empt from the provisions of subchapter I of chapter
 11 63 of title 5, United States Code.

12 “(2) TREATMENT OF UNUSED LEAVE.—

13 “(A) AFTER SERVICE AS MAGISTRATE
 14 JUDGE.—If an individual who is exempted
 15 under paragraph (1) from the subchapter re-
 16 ferred to in such paragraph was previously sub-
 17 ject to such subchapter and, without a break in
 18 service, again becomes subject to such sub-
 19 chapter on completion of the individual’s service
 20 as a magistrate judge, the unused annual leave
 21 and sick leave standing to the individual’s cred-
 22 it when such individual was exempted from this
 23 subchapter is deemed to have remained to the
 24 individual’s credit.

1 “(B) COMPUTATION OF ANNUITY.—In
2 computing an annuity under section 8339 of
3 title 5, United States Code, the total service of
4 an individual specified in subparagraph (A) who
5 retires on an immediate annuity or dies leaving
6 a survivor or survivors entitled to an annuity
7 includes, without regard to the limitations im-
8 posed by subsection (f) of such section 8339,
9 the days of unused sick leave standing to the
10 individual’s credit when such individual was ex-
11 empted from subchapter I of chapter 63 of title
12 5, United States Code, except that these days
13 will not be counted in determining average pay
14 or annuity eligibility.

15 “(C) LUMP SUM PAYMENT.—Any accumu-
16 lated and current accrued annual leave or vaca-
17 tion balances credited to a magistrate judge as
18 of the date of the enactment of this subsection
19 shall be paid in a lump sum at the time of sepa-
20 ration from service pursuant to the provisions
21 and restrictions set forth in section 5551 of
22 title 5, United States Code, and related provi-
23 sions referred to in such section.”

24 (e) CONFORMING AMENDMENTS.—

1 (1) The heading of subsection (b) of section
2 7443A is amended by striking “SPECIAL TRIAL
3 JUDGES” and inserting “Magistrate Judges of the
4 Tax Court”.

5 (2) Section 7443A(b) is amended by striking
6 “special trial judges of the court” and inserting
7 “magistrate judges of the Tax Court”.

8 (3) Subsections (c) and (d) of section 7443A
9 are amended by striking “special trial judge” and
10 inserting “magistrate judge of the Tax Court” each
11 place it appears.

12 (4) Section 7443A(e) is amended by striking
13 “special trial judges” and inserting “magistrate
14 judges of the Tax Court”.

15 (5) Section 7456(a) is amended by striking
16 “special trial judge” each place it appears and in-
17 serting “magistrate judge”.

18 (6) Subsection (c) of section 7471 is amend-
19 ed—

20 (A) by striking the subsection heading and
21 inserting “MAGISTRATE JUDGES OF THE TAX
22 COURT.—”, and

23 (B) by striking “special trial judges” and
24 inserting “magistrate judges”.

1 **SEC. 609. ANNUITIES TO SURVIVING SPOUSES AND DE-**
 2 **PENDENT CHILDREN OF MAGISTRATE**
 3 **JUDGES OF THE TAX COURT.**

4 (a) DEFINITIONS.—Section 7448(a) (relating to defi-
 5 nitions), as amended by this Act, is amended by redesign-
 6 nating paragraphs (5), (6), (7), and (8) as paragraphs (7),
 7 (8), (9), and (10), respectively, and by inserting after
 8 paragraph (4) the following new paragraphs:

9 “(5) The term ‘magistrate judge’ means a judi-
 10 cial officer appointed pursuant to section 7443A, in-
 11 cluding any individual receiving an annuity under
 12 section 7443B, or chapters 83 or 84, as the case
 13 may be, of title 5, United States Code, whether or
 14 not performing judicial duties under section 7443C.

15 “(6) The term ‘magistrate judge’s salary’
 16 means the salary of a magistrate judge received
 17 under section 7443A(d), any amount received as an
 18 annuity under section 7443B, or chapters 83 or 84,
 19 as the case may be, of title 5, United States Code,
 20 and compensation received under section 7443C.”

21 (b) ELECTION.—Subsection (b) of section 7448 (re-
 22 lating to annuities to surviving spouses and dependent
 23 children of judges) is amended—

24 (1) by striking the subsection heading and in-
 25 serting the following:

26 “(b) ELECTION.—

1 “(1) JUDGES.—”,

2 (2) by moving the text 2 ems to the right, and

3 (3) by adding at the end the following new
4 paragraph:

5 “(2) MAGISTRATE JUDGES.—Any magistrate
6 judge may by written election filed with the chief
7 judge bring himself or herself within the purview of
8 this section. Such election shall be filed not later
9 than the later of 6 months after—

10 “(A) 6 months after the date of the enact-
11 ment of this paragraph,

12 “(B) the date the judge takes office, or

13 “(C) the date the judge marries.”

14 (c) CONFORMING AMENDMENTS.—

15 (1) The heading of section 7448 is amended by
16 inserting “**AND MAGISTRATE JUDGES**” after
17 “**JUDGES**”.

18 (2) The item relating to section 7448 in the
19 table of sections for part I of subchapter C of chap-
20 ter 76 is amended by inserting “and magistrate
21 judges” after “judges”.

22 (3) Subsections (c)(1), (d), (f), (g), (h), (j),
23 (m), (n), and (u) of section 7448, as amended by
24 this Act, are each amended—

1 (A) by inserting “or magistrate judge”
 2 after “judge” each place it appears other than
 3 in the phrase “chief judge”, and

4 (B) by inserting “or magistrate judge’s”
 5 after “judge’s” each place it appears.

6 (4) Section 7448(c) is amended—

7 (A) in paragraph (1), by striking “Tax
 8 Court judges” and inserting “Tax Court judi-
 9 cial officers”,

10 (B) in paragraph (2)—

11 (i) in subparagraph (A), by inserting
 12 “and section 7443A(d)” after “(a)(4)”,
 13 and

14 (ii) in subparagraph (B), by striking
 15 “subsection (a)(4)” and inserting “sub-
 16 sections (a)(4) and (a)(6)”.

17 (5) Section 7448(g) is amended by inserting
 18 “or section 7443B” after “section 7447” each place
 19 it appears, and by inserting “or an annuity” after
 20 “retired pay”.

21 (6) Section 7448(j)(1) is amended—

22 (A) in subparagraph (A), by striking
 23 “service or retired” and inserting “service, re-
 24 tired”, and by inserting “, or receiving any an-
 25 nuity under section 7443B or chapters 83 or 84

1 of title 5, United States Code,” after “section
2 7447”, and

3 (B) in the last sentence, by striking “sub-
4 sections (a) (6) and (7)” and inserting “para-
5 graphs (8) and (9) of subsection (a)”.

6 (7) Section 7448(m)(1), as amended by this
7 Act, is amended—

8 (A) by inserting “or any annuity under
9 section 7443B or chapters 83 or 84 of title 5,
10 United States Code” after “7447(d)”, and

11 (B) by inserting “or 7443B(m)(1)(B) after
12 “7447(f)(4)”.

13 (8) Section 7448(n) is amended by inserting
14 “his years of service pursuant to any appointment
15 under section 7443A,” after “of the Tax Court,”.

16 (9) Section 3121(b)(5)(E) is amended by in-
17 serting “or magistrate judge” before “of the United
18 States Tax Court”.

19 (10) Section 210(a)(5)(E) of the Social Secu-
20 rity Act is amended by inserting “or magistrate
21 judge” before “of the United States Tax Court”.

22 **SEC. 610. RETIREMENT AND ANNUITY PROGRAM.**

23 (a) RETIREMENT AND ANNUITY PROGRAM.—Part I
24 of subchapter C of chapter 76 is amended by inserting
25 after section 7443A the following new section:

1 **“SEC. 7443B. RETIREMENT FOR MAGISTRATE JUDGES OF**
2 **THE TAX COURT.**

3 “(a) RETIREMENT BASED ON YEARS OF SERVICE.—
4 A magistrate judge of the Tax Court to whom this section
5 applies and who retires from office after attaining the age
6 of 65 years and serving at least 14 years, whether continu-
7 ously or otherwise, as such magistrate judge shall, subject
8 to subsection (f), be entitled to receive, during the remain-
9 der of the magistrate judge’s lifetime, an annuity equal
10 to the salary being received at the time the magistrate
11 judge leaves office.

12 “(b) RETIREMENT UPON FAILURE OF REAPPOINT-
13 MENT.—A magistrate judge of the Tax Court to whom
14 this section applies who is not reappointed following the
15 expiration of the term of office of such magistrate judge
16 and who retires upon the completion of the term shall,
17 subject to subsection (f), be entitled to receive, upon at-
18 taining the age of 65 years and during the remainder of
19 such magistrate judge’s lifetime, an annuity equal to that
20 portion of the salary being received at the time the mag-
21 istrate judge leaves office which the aggregate number of
22 years of service, not to exceed 14, bears to 14, if—

23 “(1) such magistrate judge has served at least
24 1 full term as a magistrate judge, and

25 “(2) not earlier than 9 months before the date
26 on which the term of office of such magistrate judge

1 expires, and not later than 6 months before such
2 date, such magistrate judge notified the chief judge
3 of the Tax Court in writing that such magistrate
4 judge was willing to accept reappointment to the po-
5 sition in which such magistrate judge was serving.

6 “(c) SERVICE OF AT LEAST 8 YEARS.—A magistrate
7 judge of the Tax Court to whom this section applies and
8 who retires after serving at least 8 years, whether continu-
9 ously or otherwise, as such a magistrate judge shall, sub-
10 ject to subsection (f), be entitled to receive, upon attaining
11 the age of 65 years and during the remainder of the mag-
12 istrate judge’s lifetime, an annuity equal to that portion
13 of the salary being received at the time the magistrate
14 judge leaves office which the aggregate number of years
15 of service, not to exceed 14, bears to 14. Such annuity
16 shall be reduced by $\frac{1}{6}$ of 1 percent for each full month
17 such magistrate judge was under the age of 65 at the time
18 the magistrate judge left office, except that such reduction
19 shall not exceed 20 percent.

20 “(d) RETIREMENT FOR DISABILITY.—A magistrate
21 judge of the Tax Court to whom this section applies, who
22 has served at least 5 years, whether continuously or other-
23 wise, as such a magistrate judge and who retires or is re-
24 moved from office upon the sole ground of mental or phys-
25 ical disability shall, subject to subsection (f), be entitled

1 to receive, during the remainder of the magistrate judge's
 2 lifetime, an annuity equal to 40 percent of the salary being
 3 received at the time of retirement or removal or, in the
 4 case of a magistrate judge who has served for at least 10
 5 years, an amount equal to that proportion of the salary
 6 being received at the time of retirement or removal which
 7 the aggregate number of years of service, not to exceed
 8 14, bears to 14.

9 “(e) COST-OF-LIVING ADJUSTMENTS.—A magistrate
 10 judge of the Tax Court who is entitled to an annuity under
 11 this section is also entitled to a cost-of-living adjustment
 12 in such annuity, calculated and payable in the same man-
 13 ner as adjustments under section 8340(b) of title 5,
 14 United States Code, except that any such annuity, as in-
 15 creased under this subsection, may not exceed the salary
 16 then payable for the position from which the magistrate
 17 judge retired or was removed.

18 “(f) ELECTION; ANNUITY IN LIEU OF OTHER ANNU-
 19 ITIES.—

20 “(1) IN GENERAL.—A magistrate judge of the
 21 Tax Court shall be entitled to an annuity under this
 22 section if the magistrate judge elects an annuity
 23 under this section by notifying the chief judge of the
 24 Tax Court not later than the later of—

1 “(A) 5 years after the magistrate judge of
2 the Tax Court begins judicial service, or

3 “(B) 5 years after the date of the enact-
4 ment of this subsection.

5 Such notice shall be given in accordance with proce-
6 dures prescribed by the Tax Court.

7 “(2) ANNUITY IN LIEU OF OTHER ANNUITY.—
8 A magistrate judge who elects to receive an annuity
9 under this section shall not be entitled to receive—

10 “(A) any annuity to which such magistrate
11 judge would otherwise have been entitled under
12 subchapter III of chapter 83, or under chapter
13 84 (except for subchapters III and VII), of title
14 5, United States Code, for service performed as
15 a magistrate or otherwise,

16 “(B) an annuity or salary in senior status
17 or retirement under section 371 or 372 of title
18 28, United States Code,

19 “(C) retired pay under section 7447, or

20 “(D) retired pay under section 7296 of
21 title 38, United States Code.

22 “(3) COORDINATION WITH TITLE 5.—A mag-
23 istrate judge of the Tax Court who elects to receive
24 an annuity under this section—

1 “(A) shall not be subject to deductions and
 2 contributions otherwise required by section
 3 8334(a) of title 5, United States Code,

4 “(B) shall be excluded from the operation
 5 of chapter 84 (other than subchapters III and
 6 VII) of such title 5, and

7 “(C) is entitled to a lump-sum credit under
 8 section 8342(a) or 8424 of such title 5, as the
 9 case may be.

10 “(g) CALCULATION OF SERVICE.—For purposes of
 11 calculating an annuity under this section—

12 “(1) service as a magistrate judge of the Tax
 13 Court to whom this section applies may be credited,
 14 and

15 “(2) each month of service shall be credited as
 16 $\frac{1}{12}$ of a year, and the fractional part of any month
 17 shall not be credited.

18 “(h) COVERED POSITIONS AND SERVICE.—This sec-
 19 tion applies to any magistrate judge of the Tax Court or
 20 special trial judge of the Tax Court appointed under this
 21 subchapter, but only with respect to service as such a mag-
 22 istrate judge or special trial judge after a date not earlier
 23 than $9\frac{1}{2}$ years before the date of the enactment of this
 24 subsection.

25 “(i) PAYMENTS PURSUANT TO COURT ORDER.—

1 “(1) IN GENERAL.—Payments under this sec-
2 tion which would otherwise be made to a magistrate
3 judge of the Tax Court based upon his or her service
4 shall be paid (in whole or in part) by the chief judge
5 of the Tax Court to another person if and to the ex-
6 tent expressly provided for in the terms of any court
7 decree of divorce, annulment, or legal separation, or
8 the terms of any court order or court-approved prop-
9 erty settlement agreement incident to any court de-
10 cree of divorce, annulment, or legal separation. Any
11 payment under this paragraph to a person bars re-
12 covery by any other person.

13 “(2) REQUIREMENTS FOR PAYMENT.—Para-
14 graph (1) shall apply only to payments made by the
15 chief judge of the Tax Court after the date of re-
16 ceipt by the chief judge of written notice of such de-
17 cree, order, or agreement, and such additional infor-
18 mation as the chief judge may prescribe.

19 “(3) COURT DEFINED.—For purposes of this
20 subsection, the term ‘court’ means any court of any
21 State, the District of Columbia, the Commonwealth
22 of Puerto Rico, Guam, the Northern Mariana Is-
23 lands, or the Virgin Islands, and any Indian tribal
24 court or courts of Indian offense.

1 “(j) DEDUCTIONS, CONTRIBUTIONS, AND DEPOS-
2 ITS.—

3 “(1) DEDUCTIONS.—Beginning with the next
4 pay period after the chief judge of the Tax Court re-
5 ceives a notice under subsection (f) that a mag-
6 istrate judge of the Tax Court has elected an annu-
7 ity under this section, the chief judge shall deduct
8 and withhold 1 percent of the salary of such mag-
9 istrate judge. Amounts shall be so deducted and
10 withheld in a manner determined by the chief judge.
11 Amounts deducted and withheld under this sub-
12 section shall be deposited in the Treasury of the
13 United States to the credit of the Tax Court Judi-
14 cial Officers’ Retirement Fund. Deductions under
15 this subsection from the salary of a magistrate judge
16 shall terminate upon the retirement of the mag-
17 istrate judge or upon completion of 14 years of serv-
18 ice for which contributions under this section have
19 been made, whether continuously or otherwise, as
20 calculated under subsection (g), whichever occurs
21 first.

22 “(2) CONSENT TO DEDUCTIONS; DISCHARGE OF
23 CLAIMS.—Each magistrate judge of the Tax Court
24 who makes an election under subsection (f) shall be
25 deemed to consent and agree to the deductions from

1 salary which are made under paragraph (1). Pay-
2 ment of such salary less such deductions (and any
3 deductions made under section 7448) is a full and
4 complete discharge and acquittance of all claims and
5 demands for all services rendered by such magistrate
6 judge during the period covered by such payment,
7 except the right to those benefits to which the mag-
8 istrate judge is entitled under this section (and sec-
9 tion 7448).

10 “(k) DEPOSITS FOR PRIOR SERVICE.—Each mag-
11 istrate judge of the Tax Court who makes an election
12 under subsection (f) may deposit, for service performed
13 before such election for which contributions may be made
14 under this section, an amount equal to 1 percent of the
15 salary received for that service. Credit for any period cov-
16 ered by that service may not be allowed for purposes of
17 an annuity under this section until a deposit under this
18 subsection has been made for that period.

19 “(l) INDIVIDUAL RETIREMENT RECORDS.—The
20 amounts deducted and withheld under subsection (j), and
21 the amounts deposited under subsection (k), shall be cred-
22 ited to individual accounts in the name of each magistrate
23 judge of the Tax Court from whom such amounts are re-
24 ceived, for credit to the Tax Court Judicial Officers’ Re-
25 tirement Fund.

1 “(m) ANNUITIES AFFECTED IN CERTAIN CASES.—

2 “(1) 1-YEAR FORFEITURE FOR FAILURE TO
3 PERFORM JUDICIAL DUTIES.—Subject to paragraph
4 (3), any magistrate judge of the Tax Court who re-
5 tires under this section and who fails to perform ju-
6 dicial duties required of such individual by section
7 7443C shall forfeit all rights to an annuity under
8 this section for a 1-year period which begins on the
9 1st day on which such individual fails to perform
10 such duties.

11 “(2) PERMANENT FORFEITURE OF RETIRED
12 PAY WHERE CERTAIN NON-GOVERNMENT SERVICES
13 PERFORMED.—Subject to paragraph (3), any mag-
14 istrate judge of the Tax Court who retires under this
15 section and who thereafter performs (or supervises
16 or directs the performance of) legal or accounting
17 services in the field of Federal taxation for the indi-
18 vidual’s client, the individual’s employer, or any of
19 such employer’s clients, shall forfeit all rights to an
20 annuity under this section for all periods beginning
21 on or after the first day on which the individual per-
22 forms (or supervises or directs the performance of)
23 such services. The preceding sentence shall not apply
24 to any civil office or employment under the Govern-
25 ment of the United States.

1 “(3) FORFEITURES NOT TO APPLY WHERE IN-
2 DIVIDUAL ELECTS TO FREEZE AMOUNT OF ANNU-
3 ITY.—

4 “(A) IN GENERAL.—If a magistrate judge
5 of the Tax Court makes an election under this
6 paragraph—

7 “(i) paragraphs (1) and (2) (and sec-
8 tion 7443C) shall not apply to such mag-
9 istrate judge beginning on the date such
10 election takes effect, and

11 “(ii) the annuity payable under this
12 section to such magistrate judge, for peri-
13 ods beginning on or after the date such
14 election takes effect, shall be equal to the
15 annuity to which such magistrate judge is
16 entitled on the day before such effective
17 date.

18 “(B) ELECTION REQUIREMENTS.—An elec-
19 tion under subparagraph (A)—

20 “(i) may be made by a magistrate
21 judge of the Tax Court eligible for retire-
22 ment under this section, and

23 “(ii) shall be filed with the chief judge
24 of the Tax Court.

1 Such an election, once it takes effect, shall be
2 irrevocable.

3 “(C) EFFECTIVE DATE OF ELECTION.—

4 Any election under subparagraph (A) shall take
5 effect on the first day of the first month fol-
6 lowing the month in which the election is made.

7 “(4) ACCEPTING OTHER EMPLOYMENT.—Any
8 magistrate judge of the Tax Court who retires under
9 this section and thereafter accepts compensation for
10 civil office or employment under the United States
11 Government (other than for the performance of
12 functions as a magistrate judge of the Tax Court
13 under section 7443C) shall forfeit all rights to an
14 annuity under this section for the period for which
15 such compensation is received. For purposes of this
16 paragraph, the term ‘compensation’ includes retired
17 pay or salary received in retired status.

18 “(n) LUMP-SUM PAYMENTS.—

19 “(1) ELIGIBILITY.—

20 “(A) IN GENERAL.—Subject to paragraph
21 (2), an individual who serves as a magistrate
22 judge of the Tax Court and—

23 “(i) who leaves office and is not re-
24 appointed as a magistrate judge of the Tax
25 Court for at least 31 consecutive days,

1 “(ii) who files an application with the
2 chief judge of the Tax Court for payment
3 of a lump-sum credit,

4 “(iii) is not serving as a magistrate
5 judge of the Tax Court at the time of fil-
6 ing of the application, and

7 “(iv) will not become eligible to re-
8 ceive an annuity under this section within
9 31 days after filing the application,
10 is entitled to be paid the lump-sum credit. Pay-
11 ment of the lump-sum credit voids all rights to
12 an annuity under this section based on the serv-
13 ice on which the lump-sum credit is based, until
14 that individual resumes office as a magistrate
15 judge of the Tax Court.

16 “(B) PAYMENT TO SURVIVORS.—Lump-
17 sum benefits authorized by subparagraphs (C),
18 (D), and (E) of this paragraph shall be paid to
19 the person or persons surviving the magistrate
20 judge of the Tax Court and alive on the date
21 title to the payment arises, in the order of pre-
22 cedence set forth in subsection (o) of section 376
23 of title 28, United States Code, and in accord-
24 ance with the last 2 sentences of paragraph (1)
25 of that subsection. For purposes of the pre-

ceding sentence, the term ‘judicial official’ as used in subsection (o) of such section 376 shall be deemed to mean ‘magistrate judge of the Tax Court’ and the terms ‘Administrative Office of the United States Courts’ and ‘Director of the Administrative Office of the United States Courts’ shall be deemed to mean ‘chief judge of the Tax Court’.

“(C) PAYMENT UPON DEATH OF JUDGE BEFORE RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court dies before receiving an annuity under this section, the lump-sum credit shall be paid.

“(D) PAYMENT OF ANNUITY REMAINDER.—If all annuity rights under this section based on the service of a deceased magistrate judge of the Tax Court terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

“(E) PAYMENT UPON DEATH OF JUDGE DURING RECEIPT OF ANNUITY.—If a magistrate judge of the Tax Court who is receiving an annuity under this section dies, any accrued annuity benefits remaining unpaid shall be paid.

1 “(F) PAYMENT UPON TERMINATION.—Any
2 accrued annuity benefits remaining unpaid on
3 the termination, except by death, of the annuity
4 of a magistrate judge of the Tax Court shall be
5 paid to that individual.

6 “(G) PAYMENT UPON ACCEPTING OTHER
7 EMPLOYMENT.—Subject to paragraph (2), a
8 magistrate judge of the Tax Court who forfeits
9 rights to an annuity under subsection (m)(4)
10 before the total annuity paid equals the lump-
11 sum credit shall be entitled to be paid the dif-
12 ference if the magistrate judge of the Tax
13 Court files an application with the chief judge
14 of the Tax Court for payment of that dif-
15 ference. A payment under this subparagraph
16 voids all rights to an annuity on which the pay-
17 ment is based.

18 “(2) SPOUSES AND FORMER SPOUSES.—

19 “(A) IN GENERAL.—Payment of the lump-
20 sum credit under paragraph (1)(A) or a pay-
21 ment under paragraph (1)(G)—

22 “(i) may be made only if any current
23 spouse and any former spouse of the mag-
24 istrate judge of the Tax Court are notified
25 of the magistrate judge’s application, and

1 “(ii) shall be subject to the terms of
2 a court decree of divorce, annulment, or
3 legal separation, or any court or court ap-
4 proved property settlement agreement inci-
5 dent to such decree, if—

6 “(I) the decree, order, or agree-
7 ment expressly relates to any portion
8 of the lump-sum credit or other pay-
9 ment involved, and

10 “(II) payment of the lump-sum
11 credit or other payment would extin-
12 guish entitlement of the magistrate
13 judge’s spouse or former spouse to
14 any portion of an annuity under sub-
15 section (i).

16 “(B) NOTIFICATION.—Notification of a
17 spouse or former spouse under this paragraph
18 shall be made in accordance with such proce-
19 dures as the chief judge of the Tax Court shall
20 prescribe. The chief judge may provide under
21 such procedures that subparagraph (A)(i) may
22 be waived with respect to a spouse or former
23 spouse if the magistrate judge establishes to the
24 satisfaction of the chief judge that the where-

1 abouts of such spouse or former spouse cannot
2 be determined.

3 “(C) RESOLUTION OF 2 OR MORE OR-
4 DERS.—The chief judge shall prescribe proce-
5 dures under which this paragraph shall be ap-
6 plied in any case in which the chief judge re-
7 ceives 2 or more orders or decrees described in
8 subparagraph (A).

9 “(3) DEFINITION.—For purposes of this sub-
10 section, the term ‘lump-sum credit’ means the
11 unrefunded amount consisting of—

12 “(A) retirement deductions made under
13 this section from the salary of a magistrate
14 judge of the Tax Court,

15 “(B) amounts deposited under subsection
16 (k) by a magistrate judge of the Tax Court cov-
17 ering earlier service, and

18 “(C) interest on the deductions and depos-
19 its which, for any calendar year, shall be equal
20 to the overall average yield to the Tax Court
21 Judicial Officers’ Retirement Fund during the
22 preceding fiscal year from all obligations pur-
23 chased by the Secretary during such fiscal year
24 under subsection (o); but does not include inter-
25 est—

1 “(i) if the service covered thereby ag-
 2 gregates 1 year or less, or

3 “(ii) for the fractional part of a
 4 month in the total service.

5 “(o) TAX COURT JUDICIAL OFFICERS’ RETIREMENT
 6 FUND.—

7 “(1) ESTABLISHMENT.—There is established in
 8 the Treasury a fund which shall be known as the
 9 ‘Tax Court Judicial Officers’ Retirement Fund’.
 10 Amounts in the Fund are authorized to be appro-
 11 priated for the payment of annuities, refunds, and
 12 other payments under this section.

13 “(2) INVESTMENT OF FUND.—The Secretary
 14 shall invest, in interest bearing securities of the
 15 United States, such currently available portions of
 16 the Tax Court Judicial Officers’ Retirement Fund as
 17 are not immediately required for payments from the
 18 Fund. The income derived from these investments
 19 constitutes a part of the Fund.

20 “(3) UNFUNDED LIABILITY.—

21 “(A) IN GENERAL.—There are authorized
 22 to be appropriated to the Tax Court Judicial
 23 Officers’ Retirement Fund amounts required to
 24 reduce to zero the unfunded liability of the
 25 Fund.

1 “(B) UNFUNDED LIABILITY.—For pur-
 2 poses of subparagraph (A), the term ‘unfunded
 3 liability’ means the estimated excess, deter-
 4 mined on an annual basis in accordance with
 5 the provisions of section 9503 of title 31,
 6 United States Code, of the present value of all
 7 benefits payable from the Tax Court Judicial
 8 Officers’ Retirement Fund over the sum of—

9 “(i) the present value of deductions to
 10 be withheld under this section from the fu-
 11 ture basic pay of magistrate judges of the
 12 Tax Court, plus

13 “(ii) the balance in the Fund as of the
 14 date the unfunded liability is determined.

15 “(p) PARTICIPATION IN THRIFT SAVINGS PLAN.—

16 “(1) ELECTION TO CONTRIBUTE.—

17 “(A) IN GENERAL.—A magistrate judge of
 18 the Tax Court who elects to receive an annuity
 19 under this section or under section 611 of the
 20 National Employee Savings and Trust Equity
 21 Guarantee Act of 2005 may elect to contribute
 22 an amount of such individual’s basic pay to the
 23 Thrift Savings Fund established by section
 24 8437 of title 5, United States Code.

1 “(B) PERIOD OF ELECTION.—An election
2 may be made under this paragraph only during
3 a period provided under section 8432(b) of title
4 5, United States Code, for individuals subject to
5 chapter 84 of such title.

6 “(2) APPLICABILITY OF TITLE 5 PROVISIONS.—
7 Except as otherwise provided in this subsection, the
8 provisions of subchapters III and VII of chapter 84
9 of title 5, United States Code, shall apply with re-
10 spect to a magistrate judge who makes an election
11 under paragraph (1).

12 “(3) SPECIAL RULES.—

13 “(A) AMOUNT CONTRIBUTED.—The
14 amount contributed by a magistrate judge to
15 the Thrift Savings Fund in any pay period shall
16 not exceed the maximum percentage of such
17 judge’s basic pay for such pay period as allow-
18 able under section 8440f of title 5, United
19 States Code.

20 “(B) CONTRIBUTIONS FOR BENEFIT OF
21 JUDGE.—No contributions may be made for the
22 benefit of a magistrate judge under section
23 8432(c) of title 5, United States Code.

24 “(C) APPLICABILITY OF SECTION 8433(b)
25 OF TITLE 5.—Section 8433(b) of title 5, United

1 States Code, applies with respect to a mag-
2 istrate judge who makes an election under para-
3 graph (1) and—

4 “(i) who retires entitled to an imme-
5 diate annuity under this section (including
6 a disability annuity under subsection (d) of
7 this section) or section 611 of the National
8 Employee Savings and Trust Equity Guar-
9 antee Act of 2005,

10 “(ii) who retires before attaining age
11 65 but is entitled, upon attaining age 65,
12 to an annuity under this section or section
13 611 of the National Employee Savings and
14 Trust Equity Guarantee Act of 2005, or

15 “(iii) who retires before becoming en-
16 titled to an immediate annuity, or an an-
17 nuity upon attaining age 65, under this
18 section or section 611 of the National Em-
19 ployee Savings and Trust Equity Guar-
20 antee Act of 2005.

21 “(D) SEPARATION FROM SERVICE.—With
22 respect to a magistrate judge to whom this sub-
23 section applies, retirement under this section or
24 section 611 of the National Employee Savings
25 and Trust Equity Guarantee Act of 2005 is a

1 separation from service for purposes of sub-
2 chapters III and VII of chapter 84 of title 5,
3 United States Code.

4 “(4) DEFINITIONS.—For purposes of this sub-
5 section, the terms ‘retirement’ and ‘retire’ include
6 removal from office under section 7443A(a)(2) on
7 the sole ground of mental or physical disability.

8 “(5) OFFSET.—In the case of a magistrate
9 judge who receives a distribution from the Thrift
10 Savings Fund and who later receives an annuity
11 under this section, that annuity shall be offset by an
12 amount equal to the amount which represents the
13 Government’s contribution to that person’s Thrift
14 Savings Account, without regard to earnings attrib-
15 utable to that amount. Where such an offset would
16 exceed 50 percent of the annuity to be received in
17 the first year, the offset may be divided equally over
18 the first 2 years in which that person receives the
19 annuity.

20 “(6) EXCEPTION.—Notwithstanding clauses (i)
21 and (ii) of paragraph (3)(C), if any magistrate judge
22 retires under circumstances making such magistrate
23 judge eligible to make an election under subsection
24 (b) of section 8433 of title 5, United States Code,
25 and such magistrate judge’s nonforfeitable account

1 balance is less than an amount that the Executive
 2 Director of the Office of Personnel Management pre-
 3 scribes by regulation, the Executive Director shall
 4 pay the nonforfeitable account balance to the partici-
 5 pant in a single payment.”

6 (b) CONFORMING AMENDMENT.—The table of sec-
 7 tions for part I of subchapter C of chapter 76 is amended
 8 by inserting after the item relating to section 7443A the
 9 following new item:

“Sec. 7443B. Retirement for magistrate judges of the Tax Court.”.

10 **SEC. 611. INCUMBENT MAGISTRATE JUDGES OF THE TAX**
 11 **COURT.**

12 (a) RETIREMENT ANNUITY UNDER TITLE 5 AND
 13 SECTION 7443B OF THE INTERNAL REVENUE CODE OF
 14 1986.—A magistrate judge of the United States Tax
 15 Court in active service on the date of the enactment of
 16 this Act shall, subject to subsection (b), be entitled, in lieu
 17 of the annuity otherwise provided under the amendments
 18 made by this title, to—

19 (1) an annuity under subchapter III of chapter
 20 83, or under chapter 84 (except for subchapters III
 21 and VII), of title 5, United States Code, as the case
 22 may be, for creditable service before the date on
 23 which service would begin to be credited for pur-
 24 poses of paragraph (2), and

1 (2) an annuity calculated under subsection (b)
2 or (c) and subsection (g) of section 7443B of the In-
3 ternal Revenue Code of 1986, as added by this Act,
4 for any service as a magistrate judge of the United
5 States Tax Court or special trial judge of the United
6 States Tax Court but only with respect to service as
7 such a magistrate judge or special trial judge after
8 a date not earlier than 9½ years prior to the date
9 of the enactment of this Act (as specified in the elec-
10 tion pursuant to subsection (b)) for which deduc-
11 tions and deposits are made under subsections (j)
12 and (k) of such section 7443B, as applicable, with-
13 out regard to the minimum number of years of serv-
14 ice as such a magistrate judge of the United States
15 Tax Court, except that—

16 (A) in the case of a magistrate judge who
17 retired with less than 8 years of service, the an-
18 nuity under subsection (c) of such section
19 7443B shall be equal to that proportion of the
20 salary being received at the time the magistrate
21 judge leaves office which the years of service
22 bears to 14, subject to a reduction in accord-
23 ance with subsection (c) of such section 7443B
24 if the magistrate judge is under age 65 at the
25 time he or she leaves office, and

1 (B) the aggregate amount of the annuity
2 initially payable on retirement under this sub-
3 section may not exceed the rate of pay for the
4 magistrate judge which is in effect on the day
5 before the retirement becomes effective.

6 (b) FILING OF NOTICE OF ELECTION.—A magistrate
7 judge of the United States Tax Court shall be entitled to
8 an annuity under this section only if the magistrate judge
9 files a notice of that election with the chief judge of the
10 United States Tax Court specifying the date on which
11 service would begin to be credited under section 7443B
12 of the Internal Revenue Code of 1986, as added by this
13 Act, in lieu of chapter 83 or chapter 84 of title 5, United
14 States Code. Such notice shall be filed in accordance with
15 such procedures as the chief judge of the United States
16 Tax Court shall prescribe.

17 (c) LUMP-SUM CREDIT UNDER TITLE 5.—A mag-
18 istrate judge of the United States Tax Court who makes
19 an election under subsection (b) shall be entitled to a
20 lump-sum credit under section 8342 or 8424 of title 5,
21 United States Code, as the case may be, for any service
22 which is covered under section 7443B of the Internal Rev-
23 enue Code of 1986, as added by this Act, pursuant to that
24 election, and with respect to which any contributions were

1 made by the magistrate judge under the applicable provi-
2 sions of title 5, United States Code.

3 (d) RECALL.—With respect to any magistrate judge
4 of the United States Tax Court receiving an annuity under
5 this section who is recalled to serve under section 7443C
6 of the Internal Revenue Code of 1986, as added by this
7 Act—

8 (1) the amount of compensation which such re-
9 called magistrate judge receives under such section
10 7443C shall be calculated on the basis of the annu-
11 ity received under this section, and

12 (2) such recalled magistrate judge of the United
13 States Tax Court may serve as a reemployed annu-
14 itant to the extent otherwise permitted under title 5,
15 United States Code.

16 Section 7443B(m)(4) of the Internal Revenue Code of
17 1986, as added by this Act, shall not apply with respect
18 to service as a reemployed annuitant described in para-
19 graph (2).

20 **SEC. 612. PROVISIONS FOR RECALL.**

21 (a) IN GENERAL.—Part I of subchapter C of chapter
22 76, as amended by this Act, is amended by inserting after
23 section 7443B the following new section:

1 **“SEC. 7443C. RECALL OF MAGISTRATE JUDGES OF THE TAX**
2 **COURT.**

3 “(a) RECALLING OF RETIRED MAGISTRATE
4 JUDGES.—Any individual who has retired pursuant to sec-
5 tion 7443B or the applicable provisions of title 5, United
6 States Code, upon reaching the age and service require-
7 ments established therein, may at or after retirement be
8 called upon by the chief judge of the Tax Court to perform
9 such judicial duties with the Tax Court as may be re-
10 quested of such individual for any period or periods speci-
11 fied by the chief judge; except that in the case of any such
12 individual—

13 “(1) the aggregate of such periods in any 1 cal-
14 endar year shall not (without such individual’s con-
15 sent) exceed 90 calendar days, and

16 “(2) such individual shall be relieved of per-
17 forming such duties during any period in which ill-
18 ness or disability precludes the performance of such
19 duties.

20 Any act, or failure to act, by an individual performing ju-
21 dicial duties pursuant to this subsection shall have the
22 same force and effect as if it were the act (or failure to
23 act) of a magistrate judge of the Tax Court.

24 “(b) COMPENSATION.—For the year in which a pe-
25 riod of recall occurs, the magistrate judge shall receive,
26 in addition to the annuity provided under the provisions

1 of section 7443B or under the applicable provisions of title
 2 5, United States Code, an amount equal to the difference
 3 between that annuity and the current salary of the office
 4 to which the magistrate judge is recalled. The annuity of
 5 the magistrate judge who completes that period of service,
 6 who is not recalled in a subsequent year, and who retired
 7 under section 7443B, shall be equal to the salary in effect
 8 at the end of the year in which the period of recall oc-
 9 curred for the office from which such individual retired.

10 “(c) RULEMAKING AUTHORITY.—The provisions of
 11 this section may be implemented under such rules as may
 12 be promulgated by the Tax Court.”

13 (b) CONFORMING AMENDMENT.—The table of sec-
 14 tions for part I of subchapter C of chapter 76, as amended
 15 by this Act, is amended by inserting after the item relating
 16 to section 7443B the following new item:

“Sec. 7443C. Recall of magistrate judges of the Tax Court.”.

17 **SEC. 613. EFFECTIVE DATE.**

18 Except as otherwise provided, the amendments made
 19 by this title shall take effect on the date of the enactment
 20 of this Act.

21 **TITLE VII—OTHER PROVISIONS**

22 **SEC. 701. TRANSFER OF EXCESS PENSION ASSETS TO MUL-** 23 **TIEMPLOYER HEALTH PLAN.**

24 (a) IN GENERAL.—Section 420(e) of the Internal
 25 Revenue Code of 1986 (relating to definitions and special

1 rules) is amended by adding at the end the following new
 2 paragraph:

3 “(5) APPLICATION TO MULTIEMPLOYER
 4 PLAN.—In the case of any plan to which section
 5 404(c) applies (or any successor plan primarily cov-
 6 ering employees in the building and construction in-
 7 dustry)—

8 “(A) the prohibition under subsection (a)
 9 on the application of this section to a multiem-
 10 ployer plan shall not apply, and

11 “(B) this section shall be applied to any
 12 such plan—

13 “(i) by treating any reference in this
 14 section to an employer as a reference to all
 15 employers maintaining the plan (or, if ap-
 16 propriate, the plan sponsor), and

17 “(ii) in accordance with such modi-
 18 fications of this section (and the provisions
 19 of this title and the Employee Retirement
 20 Income Security Act of 1974 relating to
 21 this section) as the Secretary determines
 22 appropriate to reflect the fact the plan is
 23 not maintained by a single employer.”

24 (b) AMENDMENTS OF ERISA.—

1 (1) Section 101(e)(3) of the Employee Retirement
 2 Income Security Act of 1974 (29 U.S.C.
 3 1021(e)(3)) is amended by striking “American Jobs
 4 Creation Act of 2004” and inserting “National Em-
 5 ployee Savings and Trust Equity Guarantee Act of
 6 2005”.

7 (2) Section 403(c)(1) of such Act (29 U.S.C.
 8 1103(c)(1)) is amended by striking “American Jobs
 9 Creation Act of 2004” and inserting “National Em-
 10 ployee Savings and Trust Equity Guarantee Act of
 11 2005”.

12 (3) Section 408(b)(13) of such Act (29 U.S.C.
 13 1108(b)(13)) is amended by striking “American
 14 Jobs Creation Act of 2004” and inserting “National
 15 Employee Savings and Trust Equity Guarantee Act
 16 of 2005”.

17 (c) EFFECTIVE DATE.—The amendment made by
 18 this section shall apply to transfers made in taxable years
 19 beginning after December 31, 2004.

20 **SEC. 702. TRANSFER OF EXCESS FUNDS FROM BLACK LUNG**
 21 **DISABILITY TRUSTS TO UNITED MINE WORK-**
 22 **ERS OF AMERICA COMBINED BENEFIT FUND.**

23 (a) IN GENERAL.—So much of section 501(c)(21)(C)
 24 of the Internal Revenue Code of 1986 (relating to black

1 lung disability trusts) as precedes the last sentence is
 2 amended to read as follows:

3 “(C) Payments described in subparagraph
 4 (A)(i)(IV) may be made from such trust during
 5 a taxable year only to the extent that the aggre-
 6 gate amount of such payments during such tax-
 7 able year does not exceed the excess (if any), as
 8 of the close of the preceding taxable year, of—

9 “(i) the fair market value of the as-
 10 sets of the trust, over

11 “(ii) 110 percent of the present value
 12 of the liability described in subparagraph
 13 (A)(i)(I) of such person.”

14 (b) TRANSFER.—Section 9705 of such Code (relating
 15 to transfer) is amended by adding at the end the following
 16 new subsection:

17 “(c) TRANSFER FROM BLACK LUNG DISABILITY
 18 TRUSTS.—

19 “(1) IN GENERAL.—The Secretary shall trans-
 20 fer each fiscal year to the Fund from the general
 21 fund of the Treasury an amount which the Secretary
 22 estimates to be the additional amounts received in
 23 the Treasury for that fiscal year by reason of the
 24 amendment made by section 804(a) of the National
 25 Employee Savings and Trust Equity Guarantee Act

1 of 2005. The Secretary shall adjust the amount
 2 transferred for any year to the extent necessary to
 3 correct errors in any estimate for any prior year.

4 “(2) USE OF FUNDS.—Any amount transferred
 5 to the Combined Fund under paragraph (1) shall be
 6 used to proportionately reduce the unassigned bene-
 7 ficiary premium under section 9704(a)(3) of each
 8 assigned operator for the plan year in which trans-
 9 ferred.”

10 (c) EFFECTIVE DATE.—The amendments made by
 11 this section shall apply to taxable years beginning after
 12 December 31, 2002.

13 **SEC. 703. TREATMENT OF DEATH BENEFITS FROM COR-**
 14 **PORATE-OWNED LIFE INSURANCE.**

15 (a) IN GENERAL.—Section 101 of the Internal Rev-
 16 enue Code of 1986 (relating to certain death benefits) is
 17 amended by adding at the end the following new sub-
 18 section:

19 “(j) TREATMENT OF CERTAIN EMPLOYER-OWNED
 20 LIFE INSURANCE CONTRACTS.—

21 “(1) GENERAL RULE.—In the case of an em-
 22 ployer-owned life insurance contract, the amount ex-
 23 cluded from gross income of an applicable policy-
 24 holder by reason of paragraph (1) of subsection (a)
 25 shall not exceed an amount equal to the sum of the

1 premiums and other amounts paid by the policy-
 2 holder for the contract.

3 “(2) EXCEPTIONS.—In the case of an employer-
 4 owned life insurance contract with respect to which
 5 the notice and consent requirements of paragraph
 6 (4) are met, paragraph (1) shall not apply to any of
 7 the following:

8 “(A) EXCEPTIONS BASED ON INSURED’S
 9 STATUS.—Any amount received by reason of
 10 the death of an insured who, with respect to an
 11 applicable policyholder—

12 “(i) was an employee at any time dur-
 13 ing the 12-month period before the in-
 14 sured’s death, or

15 “(ii) is, at the time the contract is
 16 issued—

17 “(I) a director,

18 “(II) a highly compensated em-
 19 ployee within the meaning of section
 20 414(q) (without regard to paragraph
 21 (1)(B)(ii) thereof), or

22 “(III) a highly compensated indi-
 23 vidual within the meaning of section
 24 105(h)(5), except that ‘35 percent’

1 shall be substituted for ‘25 percent’ in
2 subparagraph (C) thereof.

3 “(B) EXCEPTION FOR AMOUNTS PAID TO
4 INSURED’S HEIRS.—Any amount received by
5 reason of the death of an insured to the ex-
6 tent—

7 “(i) the amount is paid to a member
8 of the family (within the meaning of sec-
9 tion 267(c)(4)) of the insured, any indi-
10 vidual who is the designated beneficiary of
11 the insured under the contract (other than
12 the applicable policyholder), a trust estab-
13 lished for the benefit of any such member
14 of the family or designated beneficiary, or
15 the estate of the insured, or

16 “(ii) the amount is used to purchase
17 an equity (or capital or profits) interest in
18 the applicable policyholder from any person
19 described in clause (i).

20 “(3) EMPLOYER-OWNED LIFE INSURANCE CON-
21 TRACT.—

22 “(A) IN GENERAL.—For purposes of this
23 subsection, the term ‘employer-owned life insur-
24 ance contract’ means a life insurance contract
25 which—

1 “(i) is owned by a person engaged in
 2 a trade or business and under which such
 3 person (or a related person described in
 4 subparagraph (B)(ii)) is directly or indi-
 5 rectly a beneficiary under the contract, and

6 “(ii) covers the life of an insured who
 7 is an employee with respect to the trade or
 8 business of the applicable policyholder on
 9 the date the contract is issued.

10 For purposes of the preceding sentence, if cov-
 11 erage for each insured under a master contract
 12 is treated as a separate contract for purposes of
 13 sections 817(h), 7702, and 7702A, coverage for
 14 each such insured shall be treated as a separate
 15 contract.

16 “(B) APPLICABLE POLICYHOLDER.—For
 17 purposes of this subsection—

18 “(i) IN GENERAL.—The term ‘applica-
 19 ble policyholder’ means, with respect to
 20 any employer-owned life insurance con-
 21 tract, the person described in subpara-
 22 graph (A)(i) which owns the contract.

23 “(ii) RELATED PERSONS.—The term
 24 ‘applicable policyholder’ includes any per-
 25 son which—

1 “(I) bears a relationship to the
2 person described in clause (i) which is
3 specified in section 267(b) or
4 707(b)(1), or

5 “(II) is engaged in trades or
6 businesses with such person which are
7 under common control (within the
8 meaning of subsection (a) or (b) of
9 section 52).

10 “(4) NOTICE AND CONSENT REQUIREMENTS.—

11 The notice and consent requirements of this para-
12 graph are met if, before the issuance of the contract,
13 the employee—

14 “(A) is notified in writing that the applica-
15 ble policyholder intends to insure the employee’s
16 life and the maximum face amount for which
17 the employee could be insured at the time the
18 contract was issued,

19 “(B) provides written consent to being in-
20 sured under the contract and that such cov-
21 erage may continue after the insured terminates
22 employment, and

23 “(C) is informed in writing that an appli-
24 cable policyholder will be a beneficiary of any

1 proceeds payable upon the death of the em-
2 ployee.

3 “(5) DEFINITIONS.—For purposes of this sub-
4 section—

5 “(A) EMPLOYEE.—The term ‘employee’ in-
6 cludes an officer, director, and highly com-
7 pensated employee (within the meaning of sec-
8 tion 414(q)).

9 “(B) INSURED.—The term ‘insured’
10 means, with respect to an employer-owned life
11 insurance contract, an individual covered by the
12 contract who is a United States citizen or resi-
13 dent. In the case of a contract covering the
14 joint lives of 2 individuals, references to an in-
15 sured include both of the individuals.”.

16 (b) REPORTING REQUIREMENTS.—Subpart A of part
17 III of subchapter A of chapter 61 of the Internal Revenue
18 Code of 1986 (relating to information concerning persons
19 subject to special provisions) is amended by inserting after
20 section 6039H the following new section:

21 **“SEC. 6039I. RETURNS AND RECORDS WITH RESPECT TO**
22 **EMPLOYER-OWNED LIFE INSURANCE CON-**
23 **TRACTS.**

24 “(a) IN GENERAL.—Every applicable policyholder
25 owning 1 or more employer-owned life insurance contracts

1 issued after the date of the enactment of this section shall
2 file a return (at such time and in such manner as the
3 Secretary shall by regulations prescribe) showing for each
4 year such contracts are owned—

5 “(1) the number of employees of the applicable
6 policyholder at the end of the year,

7 “(2) the number of such employees insured
8 under such contracts at the end of the year,

9 “(3) the total amount of insurance in force at
10 the end of the year under such contracts,

11 “(4) the name, address, and taxpayer identifica-
12 tion number of the applicable policyholder and the
13 type of business in which the policyholder is en-
14 gaged, and

15 “(5) that the applicable policyholder has a valid
16 consent for each insured employee (or, if all such
17 consents are not obtained, the number of insured
18 employees for whom such consent was not obtained).

19 “(b) RECORDKEEPING REQUIREMENT.—Each appli-
20 cable policyholder owning 1 or more employer-owned life
21 insurance contracts during any year shall keep such
22 records as may be necessary for purposes of determining
23 whether the requirements of this section and section
24 101(j) are met.

1 “(c) DEFINITIONS.—Any term used in this section
2 which is used in section 101(j) shall have the same mean-
3 ing given such term by section 101(j).”.

4 (c) CONFORMING AMENDMENTS.—

5 (1) Paragraph (1) of section 101(a) of the In-
6 ternal Revenue Code of 1986 is amended by striking
7 “and subsection (f)” and inserting “subsection (f),
8 and subsection (j)”.

9 (2) The table of sections for subpart A of part
10 III of subchapter A of chapter 61 of such Code is
11 amended by inserting after the item relating to sec-
12 tion 6039H the following new item:

“Sec. 6039I. Returns and records with respect to employer-owned life insurance
contracts.”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to life insurance contracts issued
15 after the date of the enactment of this Act, except for a
16 contract issued after such date pursuant to an exchange
17 described in section 1035 of the Internal Revenue Code
18 of 1986 for a contract issued on or prior to that date.
19 For purposes of the preceding sentence, any material in-
20 crease in the death benefit or other material change shall
21 cause the contract to be treated as a new contract except
22 that, in the case of a master contract (within the meaning
23 of section 264(f)(4)(E) of such Code), the addition of cov-

- 1 ered lives shall be treated as a new contract only with re-
- 2 spect to such additional covered lives.

